

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

752

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT United States Court of Appeals
for the District of Columbia Circuit

No. 23,551

FILED FEB 25 1970

UNITED STEELWORKERS OF AMERICA, AFL-CIO,

Nathan J. Paulson
Petitioner, Clerk

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

QUALITY RUBBER MANUFACTURING COMPANY, INC.,

Intervenor.

No. 23,709

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

QUALITY RUBBER MANUFACTURING COMPANY, INC.,

Respondent,

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO,

Intervenor.

On Petition to Review and Cross-Petition for Enforcement of
an Order of The National Labor Relations Board

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U.S.A.

DEC 1 196

PITTSBURGH, PA

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: United Steelworkers of America

3. 1.68 Charge filed

3.11.68 Amended Charge filed

3.26.68 Second Amended Charge filed

4.30.68 Regional Director's Complaint and Notice of Hearing, issued
1/

5. 8.68 Company's Answer to Complaint

6. 7.68 Regional Director's Order Rescheduling Hearing, dated

6.26.68 General Counsel's request for leave to appeal the Trial Examiner's denial of his motion to amend the complaint, dated

6.26.68 Hearing opened

6.27.68 Hearing closed

6.28.68 Board's telegram granting General Counsel's request for leave to appeal the Trial Examiner's denial of his motion and reversing the Trial Examiner's ruling, dated

8.14.68 Re-opened hearing opened

8.14.68 Re-opened hearing closed

12. 6.68 Trial Examiner's Decision, issued

1.13.69 Company's letter requesting permission to argue orally, dated (Denied, see page 1, footnote 1 of the Board's Decision and Order)

1.15.69 Company's exceptions to Trial Examiner's Decision, received

1.21.69 Board's letter referring Company's request to argue orally to the Board, dated
2/

1.27.69 Petitioner's Cross-Exceptions to Trial Examiner's Decision, received

1/ Company herein was Respondent before the Board.

2/ Petitioner herein was Charging Party before the Board.

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Wakefield, Mich.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D.C.

QUALITY RUBBER MANUFACTURING
COMPANY, INC.,

Respondent

and

Case 30-CA-780

UNITED STEELWORKERS OF
AMERICA, AFL-CIO,

Charging Party

Dennis M. Selby, Esq., Timothy D. Nelson, Esq., and Wallace Taine, Esq., for the General Counsel.
James M. Collins, Esq., of Negaunee, Mich. (Bridges & Collins, Attorneys), and Mr. Joseph Soltis, of Caspian, Mich., staff representative, for the Charging Party.
Ivan D. Wright, Esq., of Ironwood, Mich., and Robert A. Burns, Esq., of Wakefield, Mich., for the Respondent.

TRIAL EXAMINER'S DECISION

SIDNEY D. GOLDSBERG, Trial Examiner: This case was commenced, pursuant to Section 10(b) of the National Labor Relations Act, as amended (herein called the Act), by the issuance of a complaint ^{1/} alleging that Quality Rubber Manufacturing Company, Inc. (herein called Respondent or the Company), through its plant superintendent, violated Section 8(a)(1), (3), and (5) of the Act by coercively interrogating employees; by threatening to discharge them and close the plant if they chose to be represented by a union; by discriminatorily discharging 12 employees, on February 21, 26, and 28, 1968, to discourage their union activities and membership; and by refusing to recognize United Steelworkers of America, AFL-CIO (herein called the Union), as the collective-bargaining representative of the employees although the Union was designed as such by a majority of the employees in an appropriate unit.

^{1/} April 30, 1968, on a charge filed March 1, and amended charges filed March 11 and 25, 1968.

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5 Respondent answered, denying that it had violated the Act as alleged in the complaint, and the issues so raised came on for trial before me at Wakefield, Michigan, on June 26 and 27, 1968. During the course of the trial, the General Counsel moved to amend the complaint to allege the wrongful discharge of an additional employee on May 5, 1968. The motion was denied but the Board, on appeal, directed that the amendment be permitted. Respondent thereupon denied having wrongfully discharged that employee and this issue came on for trial before me at Wakefield, Michigan, on August 14, 1968.

10 At all sessions of the trial, the General Counsel, the Union, and the Respondent were represented by counsel, were afforded an opportunity to adduce evidence, cross-examine witnesses, and argue upon the facts and the law. Briefs were filed by the General Counsel and by counsel for the Respondent and they have been considered.

15 For reasons hereinafter set forth in detail, I find that Respondent unlawfully discharged 11 of the 12 employees terminated in February but that the May 5 discharge was not unlawful; I also find that in February and March the Union was designated by a majority of Respondent's employees, in an appropriate unit, as their collective-bargaining representative and that, therefore, Respondent's refusal to bargain with it was also unlawful.

20 Upon the entire record, and the demeanor of the witnesses, I make the following:

25 Findings of Fact

I. The Employer

30 Respondent operates a plant at Wakefield, Michigan, where it produces rubber gaskets for use, primarily, in automobiles. It admits that during 1967 it shipped out of the State of Michigan products valued at more than \$50,000, and imported products valued at more than \$50,000, and that it is an employer engaged in commerce. I so find.

35 II. The Labor Organization

Respondent admits that the Union is a labor organization.

40 III. The Unfair Labor Practices

A. Background

45 Respondent operates similar plants at Chicago, Illinois, and Wakefield, Michigan, but only the Wakefield plant is involved in this case. William Tersinar, plant superintendent at the Wakefield plant since it was opened in July 1967, had previously been plant superintendent at Chicago for about 14 years.

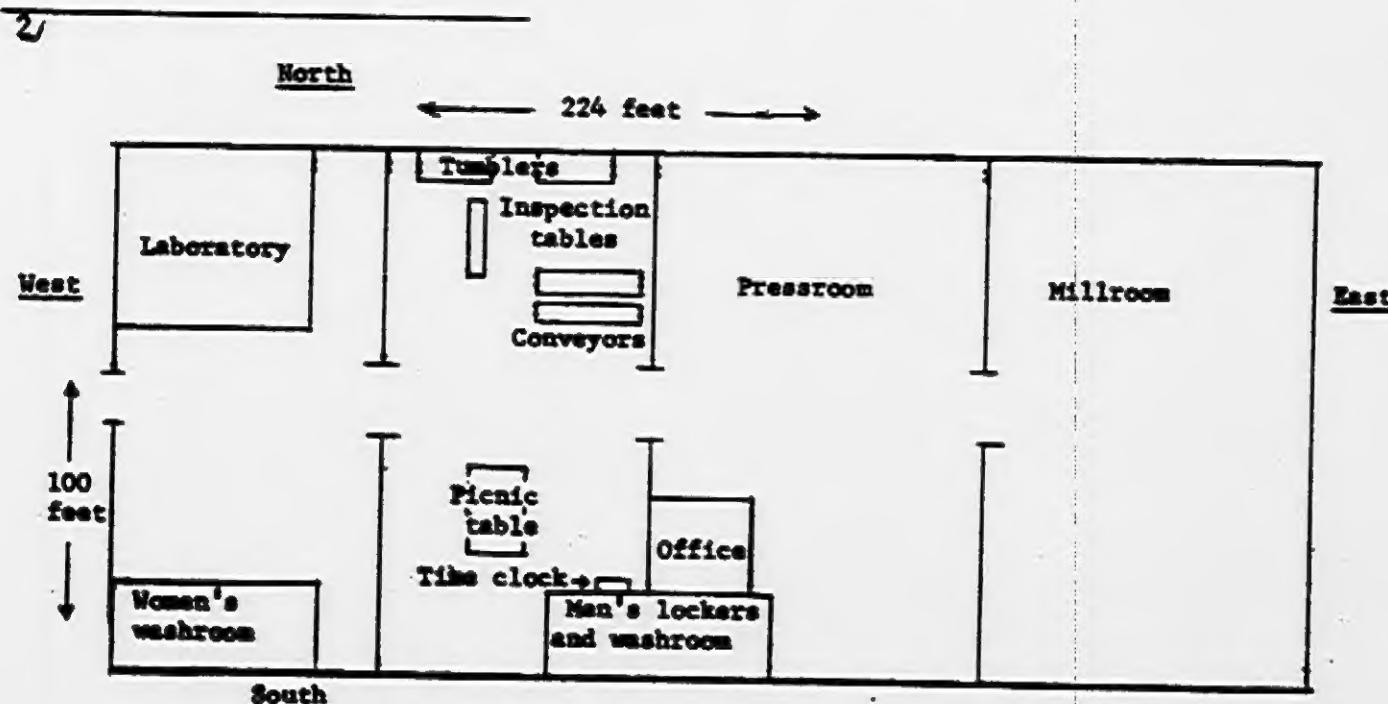
50 The Wakefield plant consists of a single, rectangular building, about 100 feet wide and 224 feet deep, divided into four rooms, each the width of the building but varying in depth. The front entrance is in the center of the west wall of the building and the openings between the rooms are in the center of the partitions. A rough sketch showing the relative positions

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of the rooms and the approximate location of the furniture and machinery referred to herein (but not precise distances or dimensions) is set forth below. 2/

5 In the pressroom there are several rows of machines, each containing an oven and a set of molds. Raw material, usually pellets of rubber, is placed by the operator into each of the hundred or more cavities in the mold, which is then closed and moved into the oven where it is heated for the necessary interval, usually 8 minutes, when it automatically comes down.
 10 The operator then pulls the mold out of the oven, pries it open, takes out the formed gasket, cleans the cavities with compressed air, and fills them for the next operation. The estimates for this operation varied from 1-1/2 minutes claimed sufficient by Plant Superintendent Tersinar 3/ to the 4 to
 15 8 minutes claimed necessary by employee Donald Pikka. Each pressroom employee was responsible for three machines, filling and closing them in turn so that, when the third machine had been filled, the first had completed, or almost completed, its process and become ready to be opened and refilled.
 20 The only opportunity for the pressmen to rest would be during the time between the closing of the third mold and the necessity for opening and refilling the first one.

After the formed gaskets are removed from the molds, they are placed in the tumbling machines where, at a temperature of 60 degrees below zero, they are tumbled to smooth their surfaces. They are then placed on a conveyor belt which takes them to the inspecting tables where the women employees check them for defects and, if not rejected, pack them for shipping.



3/ ". . . if the man is fast."

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In February 1968, the plant operated on two shifts: the "day" shift, from 7 a.m. until 5 p.m. on the first 4 days of the week and from 7 a.m. until 3 p.m. on the fifth day; and the "afternoon" shift, from 5 p.m. until 3 a.m. There were no scheduled "breaks" on either shift.

5

8. Outline of Relevant Events

While there can be no dispute concerning the broad outline of the important events in this case, the detailed accounts of each of them, as given by the General Counsel's witnesses, were almost entirely controverted by Respondent. The record, however, shows that in January and early February, according to employee-witnesses, they discussed among themselves their dissatisfaction with their working conditions, particularly the lack of any lunch period.^{4/} During the week February 12--16, the employees on the afternoon shift, after notifying John Tersinar, in charge of that shift, of their intention, took a 10-minute break for lunch. John Tersinar, the employees testified, appeared dissatisfied with their conduct but said nothing until the end of the week when he said that anyone who continued the practice would be discharged. The break was not thereafter taken.^{5/} On Wednesday of the following week, however, William Tersinar returned to the plant in the evening and discharged Ray Sibley. As Sibley was leaving, he stopped to talk with employees Donald Pikka and Herbert Johnson. Tersinar thereupon directed them to leave and not to return.

During the following weekend, a number of Respondent's employees signed cards authorizing the Union to represent them. William Tersinar admitted that on Sunday afternoon he had a telephone call reporting this activity.

On Monday morning, when the men reported for work, William Tersinar told them, they testified, not to clock in but to sit down and wait. At starting time, it is clear, seven of the eight employees left the plant and the remaining employee went to work. Later that morning, a representative of the Union telephoned Tersinar, informed him that a majority of the plant employees had designated the Union as their representative and requested that the seven men be returned to work. Tersinar refused, stating that they had quit. In later telephone calls that day and the day following, the union representative again stated that the Union was the agent of a majority of the employees and requested an opportunity to bargain with Respondent.

On Wednesday afternoon George Golembeski, a day-shift employee who had been ill and not present Monday morning, telephoned the plant to say he was ready to return to work but Tersinar told him to stay home.

On March 15, after an exchange of letters, the union representative met with Respondent's counsel and plant superintendent. Photocopies of the Union's authorization cards were examined by Respondent's representatives, who then announced that, since several of those cards had been signed by people who were no longer employed, the Union did not represent a majority of its employees, and they refused to bargain with the Union.

4/ Plant Superintendent William Tersinar admitted having been asked about a lunch hour "early in the year" and having answered that there was "no such thing in the pressroom."

5/ John Tersinar denied this entire incident.

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C. The Issues

5 The General Counsel contends that Respondent, by William Tersinar's threats and coercive interrogation from September 1967 through April 1968, interfered with the employees' rights of self-organization; that the discharges of 13 employees on February 21, 26, and 28, and May 5, 1968, were discriminatory and to discourage union membership; and that the Company's refusal to bargain with the Union on February 27, March 25, and thereafter violated Section 8(a)(5) of the Act.

10 Respondent's counsel points out that the basic issue herein is whether the terminations of employment on February 21 and 26 were valid actions by the Company because, if they were, the Union did not represent a majority of the employees when it made its demand for recognition. With commendable candor, however, Respondent's counsel concedes that, if those terminations were unlawful, the Union did represent a majority and the refusal to bargain was also unlawful.

15 No issue is raised by Respondent concerning the validity of the card authorizations or the appropriateness of the unit.

D. Discussion and Conclusions1. Union animus

20 As background evidence of Respondent's basic hostility to self-organization among its employees, the General Counsel adduced evidence from Raymond Monti, an employee from June 21, 1967, until he was terminated on February 26, 1968, of a conversation he had with William Tersinar in April 1967. Monti testified that Tersinar was showing him around the machinery then being installed in the plant, in connection with the possibility that he, Monti, might apply for a job. At one point in their conversation, according to Monti, Tersinar stated that the "one thing" that would not be tolerated in the plant was a union; that the Chicago plant had a union but that "it did not pay" for the employees because "they got nothing but 5 cents an hour." Tersinar did not deny the incident, except to testify that he had not "at any time told anybody" that he did want a union in the plant.

2. Interference, restraint, and coercion

25 The complaint includes nine subparagraphs alleging incidents of coercion and restraint perpetrated by Plant Superintendent Tersinar against employees. Seven of these subparagraphs deal with statements closely connected with, or subsequent to, the alleged discharges on February 21 and 26, and they can be best discussed in connection with those actions by Respondent.

30 Employee Nels Luoma testified that, around the beginning of October 1967, a fellow employee, Ralph Olsen, was laid off; that the following day he asked Plant Superintendent Tersinar why this had been done and that Tersinar answered: "Because he's a union organizer." Employees Verner Mattson and Glen LeGassa testified that they overheard this conversation and they corroborated Luoma's testimony. Tersinar denied having made this statement. For the reasons set forth later in this decision, I do not credit Tersinar's denial and

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find that he made the statement. It constituted a clearly coercive threat of similar treatment to any employee who might attempt to exercise the right of self-organization guaranteed in the Act and, therefore, it violated Section 8(a)(1) thereof.^{6/}

Employee Donald Pikka testified that, on the Friday preceding New Year's Day in 1968, i.e., December 29, 1967, he applied to Plant Superintendent Tersinar for work; that Tersinar asked him whether he belonged to a union and said they didn't want a union in the place; that he was hired and started work on January 2. Tersinar admitted, of course, that he had hired Pikka but testified that he did not remember the incident. He nevertheless denied having ever made these statements to Pikka or to "anybody in the plant or outside. . . ." Here, again, I do not credit Tersinar's denial: I find that he asked the question, stated his determination not to have a union in the plant and that, in context, these were coercive in violation of Section 8(a)(1) of the Act.

3. The lunch break and the discharges of February 21

The employees of the plant were dissatisfied with the absence of a lunch break but had been unsuccessful in obtaining one.^{7/} On Monday, February 12, according to employees Donald Pikka and Raymond Sibley, they conferred with Herbert O. Johnson, another employee on the afternoon shift, and decided to ask John Tersinar, in charge of that shift,^{8/} for a 10-minute lunch break.

^{6/} This incident is alleged in the complaint as violative of Section 8(a)(1) and testimony fixes its occurrence well within 6 months prior to the filing of the charge. The statement in the General Counsel's brief that this incident cannot be found to be a violation by reason of Section 10(b) is regarded as inadvertent.

^{7/} Plant Superintendent Tersinar first denied but, when confronted with the contrary statement in his pretrial affidavit, admitted that at the beginning of the year an employee had asked him why they didn't have a lunch hour and that he had answered that "there was no such thing as a lunch hour in the pressroom."

^{8/} John Tersinar, son of Plant Superintendent William Tersinar, was less than 22 years old at this time. He had, however, been employed by Respondent for 4-1/2 years, the first 3 at the plant in Chicago and thereafter at Wakefield since it opened. Despite William Tersinar's effort to downgrade his son's position by testifying that he "wasn't assigned to anything" and describing his duties as "a teacher of the employees," he admitted that his son was "running the second shift" of the press department, that his duties were "to see that everything was running to the orders I left him correctly and that everybody were on their job"; that he recommended hiring, promotions, and discharges and that he "responsibly directed" the work of the employees on the second shift. He also testified that he expected the men on the afternoon shift to take instructions from his son and that his son did relay his orders to the men. Both Sibley and Pikka, who were on the afternoon shift, testified that they took their orders from John Tersinar and that they had requested and been granted time off by him. It seems clear, and I find, that John Tersinar, although not empowered to hire and fire, did have the power "responsibly to direct" the pressmen on the afternoon shift rather than merely to relay orders and that he was a supervisor within the meaning of Section 2(11) of the Act.

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They appointed Johnson as their spokesman and he asked John Tersinar to permit the break. Tersinar told Johnson, Sibley testified, that "we can't let the molds stop, we've got to keep them running." Nevertheless, according to Pikka and Sibley, they, plus Johnson, Matt Mattson, and George Golembeski, took a 10-minute break for lunch that evening and on Tuesday, Wednesday, and Thursday of that week. They testified that John Tersinar made no protest, but that his manner was harsher toward them than toward the other employees on the shift and that he assisted other employees but would not assist them. On Friday, however, as they were about to take the break, John Tersinar told Sibley and Pikka that, if they took a break that evening, "not to bother to come out Monday." They did not take the break again. About 2:30 a.m., their normal quitting time that night, John Tersinar directed them to put another load in their molds and that this required them to work about 15 or 20 minutes longer.

On Wednesday evening, February 21, Plant Superintendent Tersinar returned to the plant about 7:30 and summoned Raymond Sibley to the office. Sibley testified that he found Tersinar there alone; that Tersinar asked him whether he "liked to work there" and he said he did; that Tersinar was "saying something" when he, Sibley, said: "Well, quit beating around the bush, are you going to lay me off, or what?"; and that Tersinar then said: "Yes, that's the idea." Sibley then asked the reason for his layoff and Tersinar said it was "for giving his son trouble." Sibley asked for a layoff slip and Tersinar told him to come back for it and for his pay the following day.

Sibley testified that as he passed along the row of machines he told Pikka that he had been laid off and that he then went to the picnic table to pick up his lunch pail whereupon William Tersinar told him to "get out." As he was about to leave, he testified, Tersinar said, without apparent reason; "I've dealt with the Labor Boards and the unions for 20 years."

The following day, Sibley testified, he came to the plant for his pay and a layoff slip; he found both Pikka and Herbert Johnson there. He asked Tersinar for a layoff slip and Tersinar said: "What do you mean, I fired you." At that time John Tersinar and Johnson were having a discussion about the adequacy of the time on the molds and Johnson said that John Tersinar was too young to handle men; that William Tersinar then repeated the statement that he had dealt with the unions and Labor Boards for 20 years and could handle them.

Pikka testified that on Wednesday evening, as Sibley returned from the office and passed along the line of machines, he told him he'd been laid off; that Johnson came over and they were standing together when John Tersinar came over to him and said: "You go, too." Pikka testified that he went to the picnic table to put on his coat when William Tersinar came to him and told him to punch out; that Johnson was close behind him and Tersinar told him, also, to punch out. According to Pikka, Johnson asked William Tersinar why Sibley was being laid off and Tersinar said he didn't have to tell him.

At that point, Pikka testified, he told William Tersinar that he had been scheduled to get a raise in 30 days and he didn't get it whereupon Tersinar said he'd get whatever was coming to him. Tersinar continued, according to Pikka, by saying: "If you get a union in the place you'll have to work a lot harder." The three employees then left.

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5 The next day, Pikka testified, he came to the plant for his check and found Sibley and Johnson there; they received their checks and asked for layoff slips; William Tersinar said that they had quit but that they might get layoff slips the following week if the Company decided to grant them; and that Tersinar repeated his statement about having "dealt with Labor Boards for 20 years."

10 Respondent's account of this incident is radically different: John Tersinar testified that Sibley's work was poor the first week of his 3-week employment and there was no improvement the second week; that during the second week Sibley started to throw bits of material around and to wander away from his work. He stated that he called his father and told him about Sibley and that his father said to warn Sibley; he also testified that his father talked to Sibley, perhaps more than once, either in the pressroom or the office but he couldn't remember when that occurred. The evening of Sibley's discharge, John Tersinar testified, "was the worst"; that Sibley was throwing metal around and walking away from his press, so he called his father, who came to the plant and told him to send Sibley to the office. When Sibley came out of the office, Tersinar stated, he ran over to Pikka and Johnson and said: "I'm fired," whereupon both Pikka and Johnson said: "Let's go, then" and they waved to the other employees asking them to go out also but none of the others did. He also testified that nobody except Sibley ever threw metal or rubber about the plant.

25 William Tersinar, who testified before his son, stated that he hired Sibley in January and that he thought, during the first week, that Sibley "was going to make a pretty good man"; but that then Sibley started to throw things about and fail to stay on the job. He told his son to warn Sibley that, if the horseplay continued, he would be let go and he testified that he once warned Sibley himself. On February 21, he testified, his son telephoned him and said he couldn't keep Sibley on the job and that he was throwing metal around; he went to the plant and summoned Sibley to the office; that Sibley came into the office saying: "You're going to fire me" but that he said: "Well, let's don't put it as 'fire', we just can't use you if you're going to continue this horseplay." According to Tersinar, Sibley turned right around, went into the pressroom, waving his arms, and saying, "I got fired, let's get out of here." He saw Pikka and Johnson walking along with Sibley, Tersinar stated, so he went over to them and told them: "punch out, if you boys are going out, and don't come back."

40 Both John and William Tersinar denied that there had been a lunch break in the pressroom or a request for one. Herbert Johnson did not testify.

45 The two accounts of the events leading to and surrounding these discharges are in absolute conflict and neither is inherently improbable.^{9/} The testimony of each of the Tersinars, except for the relatively minor conflict as to

50 9/ Excepted from this comment are the statements, attributed to William Tersinar on both February 21 and 22, that he had "dealt with the Labor Boards and the unions for 20 years" and that: "if you get a union in the place you'll have to work a lot harder." There is nothing to indicate that Respondent then had any knowledge of union activity and nothing in the record that gives these statements probability at that time, although I find that they were made at the time of the additional discharges on February 26. Accordingly, I do not find that Tersinar made these statements on February 21 and 22.

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whether Sibley was, during the second week of his employment, a good or poor employee, is mutually corroborative, and the testimony of Sibley and Pikka is also mutually corroborative. The interest of all who testified on this matter is also apparent: Sibley and Pikka are discharged employees who seek reinstatement and the Tersinars, as operators of the plant, are endeavoring to defend their own actions. It becomes necessary, therefore, to take into account the credibility of the witnesses. In this area, however, the task is easier: John Tersinar was very clearly---and not unnaturally---under the complete domination of his father, and William Tersinar made much of the fact that his son had no managerial discretion (although I have found to the contrary). As a witness, William Tersinar was aggressive, yet frequently evasive, and he was forced to withdraw several of his testimonial denials when confronted with the contents of his pretrial statement. His manner in testifying convinced me that his answers were designed to justify his actions and support Respondent's defense rather than disclose the facts.

After denying that the subject of a lunch break had ever arisen, he conceded that it had, and his answers with respect to this subject, constantly comparing the plant to those of other companies, were obviously based upon how he felt Respondent's plant should operate. Most important, however, in my conclusion that William Tersinar was not a credible witness, is his testimony in connection with the events of Sunday, February 25, the next incident to be discussed herein.

The testimony of William and John Tersinar is rejected, therefore, and that of Sibley and Pikka is accepted. I find that Sibley, Pikka, Johnson, and some of the other employees on the afternoon shift took a 10-minute lunch break February 12 to 15 and discontinued it under threat of discharge. Only this background gives a reasonable explanation for the Tersinars' animosity toward Johnson and Pikka which led to their discharge on no greater provocation than their momentary conference with Sibley after his discharge, since neither of the Tersinars testified to any action by them that could be reasonably construed as walking out. Moreover, William Tersinar conceded that they were both good workmen whom he had not theretofore considered firing. I find that Sibley, Johnson, and Pikka were discharged in retaliation for their having sought and having taken a 10-minute lunch break.

The complaint alleges that these three employees were "discriminatorily terminated . . . because of their union sympathy, and in order to discourage the union membership and activities of their fellow employees" and the argument, in the General Counsel's brief, that these three employees were discharged "to discourage union . . . activities" is based upon his contention that the evidence shows that William Tersinar was aware of "union" activity.^{10/}

45 10/ The General Counsel relies upon William Tersinar's antiunion statement to Raymond Monti in April 1967 that Respondent would not have a union in the plant; upon Tersinar's statement that the reason for Olsen's layoff was because he was a "union organizer" (herein found violative of Section 8(a)(1) of the Act); upon Tersinar's statement to Pikka before he hired him in late December 1967 that he didn't want a union in the place (also found herein violative of Section 8(a)(1) of the Act); upon the statements of William Tersinar that he had "dealt with unions and Labor Boards for 20 years"; upon William Tersinar's statement that "if a union came in" the men would have to work harder; upon Mrs. Vilencia's testimony that William Tersinar warned her that her husband's involvement in union activities might get him discharged and that this occurred prior to her telephone conversation with him on February 25 (although

(Continued)

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The credible evidence, however, does not support a finding that Respondent had knowledge of union---as distinguished from concerted---activity among the employees at this time.

5 The final paragraph of the complaint, however, alleges that all the conduct set forth therein constituted "unfair labor practices, as defined in Section 8(a)(1), (3) and (5) of the Act" and the General Counsel argues, alternatively, that these discharges were to coerce the employees for their exercise of rights guaranteed in Section 7 of the Act, i.e., concerted activities for mutual aid or protection.

10 While it now appears, by the exercise of hindsight, that it would have shown better judgement to have included an express allegation that Respondent's conduct also constituted "interference, restraint, and coercion," rather than simply using the less satisfactory shorthand device of stating that, by its conduct, "Respondent has engaged in . . . unfair labor practices, as defined in Section 8(a)(1), (3) and (5) of the Act," the Board and courts have nevertheless held that due process does not require rigidity in the relationship of pleading and proof but that the real questions are whether Respondent was adequately informed of the claims to be adjudicated and whether the issues were, in fact, fully litigated.^{11/} I think that there can be no doubt that Respondent herein was adequately informed that the discharge of employees Sibley, Pikka, and Johnson on February 21 would be litigated as an unfair labor practice: whether the General Counsel's proof at the trial was on the basis of their concerted activity in seeking a lunch break or on the basis of their "membership in a labor organization" could not, and did not, have any material effect on the nature of Respondent's defense that Sibley was discharged for misconduct in throwing material around and that William Tersinar, when he saw Pikka and Johnson about to walk out, told them that if they did so they need not come back.

15 Accordingly, I find that Sibley, Pikka, and Johnson were discharged in retaliation for having engaged in concerted activity in an attempt to affect their conditions of employment and that their discharge by Respondent for this activity interfered with their exercise of the right guaranteed in

20 ^{10/} her affidavit places this conversation on February 26), and upon the fact that such knowledge by Respondent is inferable because both the plant and the community are small.

25 A serious difficulty with the General Counsel's reliance upon these factors is that LaGassa's testimony shows that the first overt activity in support of the Union occurred on Saturday, February 24, when he obtained blank authorization cards and began soliciting signatures among his fellow employees. For this reason, there appears to be no foundation of probability for the statements attributed to Tersinar, at the time of these first discharges, concerning his dealings with Labor Boards and unions and to the likelihood that the men would have to work harder if a union came in, and I do not find that they were made. For the same reason I cannot justify an inference that Tersinar knew, because of the small size of the plant and the community, that there was current activity in support of the Union. Finally, Mrs. Vilencia's testimony concerning Tersinar's warning to her concerning union activity by her husband fixes the date of that warning both before and after her February 25 telephone call and, accordingly, proves neither date.

30 ^{11/} Independent Metal Workers, Local 1 (Hughes Tool Company), 147 NLRB 1573, 1576--77; The Frito Company v. N.L.R.B., 330 F.2d 458 (C.A. 9).

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Section 7 of the Act to engage in concerted activities for mutual aid or protection and that Respondent thereby violated Section 8(a)(1) thereof.^{12/}

Moreover, Section 2(b) of the Act clearly indicates, and the Board has frequently held, that no particular formality of organization for concerted activities is necessary and that any group of employees, united for the purpose of dealing with their employer concerning conditions of their employment, constitutes a labor organization within the meaning of the Act.^{13/} Accordingly, I find that Respondent's discharge of these three employees also constituted discrimination "to discourage union activities" and an unfair labor practice as defined by Section 8(a)(3) of the Act.

4. Respondent's notice of union activity

During the weekend of February 24--25, employee LeGassa persuaded many of his fellow employees to sign union authorization cards. The progress of the campaign, however, was not entirely smooth and an argument occurred at a gasoline station which resulted in a telephone call to William Tersinar by Mary Vilencia, wife of Mike Vilencia, a pressroom employee. Mrs. Vilencia told Tersinar that her husband had nothing to do with "the group of employees who were involved in union activities at the plant." According to Mrs. Vilencia,^{14/} Tersinar answered that he had heard rumors of a union at the plant but didn't believe them; that "he hoped this didn't close the plant due to the high overhead" and that the men "should have waited a couple of years before they organized and had they waited the wages might have gone up to possibly \$2.65 per hour this summer."

Although William Tersinar admitted having received the call from Mrs. Vilencia and that she said her husband was threatened by some people "trying to have him sign some card," he claimed he was "not interested" in her call because he was watching television. He also said he could not recall that she said her husband "didn't have anything to do with union organization in the plant" although a portion of his pretrial affidavit, received in evidence, so states. Similarly, he was unable to recall, both when he gave a pretrial affidavit and when he testified, having said anything about plant closing or a raise in wages. He did not, however, dispute the testimony of Clarence Johnson, who is still employed, that he telephoned him at 6:30

⁴⁰ ^{12/} Washington Aluminum Company, 126 NLRB 1410, enforcement directed, 370 U.S. 9.

⁴⁵ ^{13/} Phaeotron Instrument and Electronic Company, 145 NLRB 966, 1006; Dove Manufacturing Company, 128 NLRB 778; and see Latex Industries, Incorporated, 132 NLRB 1.

⁵⁰ ^{14/} Mrs. Vilencia was a most reluctant and hostile witness: she quarreled with counsel and refused to answer questions. When confronted with her pretrial affidavit, she claimed not to remember the facts set forth in it, although she conceded that the information given to the investigating agent was true. Accordingly, the affidavit was received in evidence as past recollection recorded (3 Wigmore, Evidence §734, 746; 3d Ed.) and has been considered as if testimonially given.

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5 Sunday evening to ask whether he had been asked to sign a union card and
that he said "I'll tell you right now, if the union comes in we're going
to close the doors."15/ Not only does Clarence Johnson's testimony refute
Tersinar's statement that he was "not interested" in Mrs. Vilencia's message
concerning the Union's card campaign, but it corroborates and recasts in
clearly coercive language Mrs. Vilencia's testimony concerning his statement
to her concerning the plant's closing. Based upon this incident, as well
as the others noted herein and his demeanor while testifying, I conclude
that William Tersinar was not a credible witness. Accordingly, I find that
10 Tersinar threatened to close the plant if a union came in and held out a
promise that, if the employees would forego self-organization, their wages
might rise substantially 16/ in the near future. Both the threat and the
"promise"17/ constituted restraint and coercion of the employees in their
15 exercise of the right of self-organization and were violative of Section
8(a)(1) of the Act.

5. The February 26 discharges

20 The first pressroom employees at the plant on Monday morning, February 26,
were Verner Mattson and Nels Luoma, who arrived at 5:30 a.m., met in the
parking lot, and walked into the plant together. According to both of them,
William Tersinar met them at the door and said that he wanted the employees
25 to "help" him; that he had had a telephone call from Mrs. Vilencia saying
that her husband had been asked to join a union, had refused, and felt that
he was being threatened. Tersinar then asked Luoma whether it was true that
a union was trying to organize the plant and Luoma said that it was. Luoma
testified that he also said that he did not know anything about a phone
30 call. As the men moved toward the timeclock, Tersinar told them not to punch
in, so they sat down at the picnic table, located in the same room. Both
Luoma and Mattson testified that Tersinar then began talking to them about
the Union, saying he didn't want a union and if it came in he would shut
the plant down; that he drew comparisons between their own situation and
35 that in Chicago, where there is a union, saying that at Chicago the men
used to receive hams and turkeys at Thanksgiving and Easter and a bonus
at Christmas and that he had intended to give his men hams for Easter. He
also said that, although the men at Chicago had a 10-minute break before
40 and after dinner, they wished they did not have the union and that, if the
Union came in, each man would be given four presses instead of three and
they would still get no break. Mattson and Luoma testified that at that
time other employees began coming in.

45 15/ While being questioned concerning evidence that he had made a similar
statement to employee Whitburn in April 1968, Tersinar denied that he
had ever told "anybody" that the plant would be closed if the Union
came in. I do not regard this generalization as a denial of the specific
testimony.

50 16/ Six employees stated their wage rates: two received \$1; five received
\$1.90; and two received \$2.05.

17/ While the complaint does not allege promises of benefit as interference,
restraint, or coercion, it does allege "suspension of contemplated benefits"
and this fits within that allegation.

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Leonard Westeen, a millroom employee, testified that he arrived at 6:40 with Douglas Twiggs and they were about to punch in but Tersinar told them not to do so but to sit down. Glen LeGassa testified that he arrived at 5:45, that he saw Luoma and Mattson at the picnic table and that Tersinar told him not to punch in. He testified that Tersinar, after saying that the men at the Chicago plant had received a \$10 bonus the previous year, said that he was going to lay the employees off or fire them.

At 6:50, according to employee Raymond Monti, he came in, saw the men around the table and went to it, asking Luoma what the trouble was. Luoma said, "We have labor trouble." Monti testified that Tersinar then said: "I will have nothing to do with the Union: I will not tolerate it: you fellows are all fired." Shortly thereafter, George Monti, who had arrived with his father but had been delayed in the parking lot, came in and also sat down at the picnic table.

During all of this time, according to Mattson, Luoma, and LeGassa, Tersinar was walking back and forth near the picnic table, leaving the area for short intervals and then returning; that he was mumbling inaudibly some of the time and talking at other times to the men at the table. The testimony concerning Tersinar's statements was given by all five of the foregoing employee-witnesses: they did not all testify to all of the statements and their accounts of the order and terms in which Tersinar made the statements did not coincide with precision. Their combined testimony, however, adequately and credibly describes an intermittent and emotional declamation by Tersinar in which each of the described statements was made by him once or more and in which the paramount theme was his insistence that the plant would not operate if the men were represented by the Union.

Mike Vilencia, the last to arrive, testified that he came in at 6:55 and that Tersinar directed him to sit at the picnic table. At that time, therefore, pressroom employees Mattson, Luoma, LeGassa, Twiggs, Raymond Monti, George Monti, and Vilencia, and millroom employee Westeen, were present.

All of the foregoing employees who testified 18/ agree that Tersinar then asked Mattson and Luoma, in turn, whether they were going to work and that they answered: "Not if the others don't"; that Tersinar then addressed the same question to some of the others with the same result except that Vilencia answered: "I have to go to work. I have a family to support."

The employees all testified that Tersinar then said: "You are all laid off; no, you are all fired," and that he walked over to the timeclock and pulled out a number of timecards. All the employees at the picnic table, except Vilencia, thereupon went to the locker room, picked up their working clothes, and left the plant.

William Tersinar's account of the morning's events is as follows: he arrived at the plant about 6:15; shortly thereafter he saw Luoma and Mattson coming in and he told them not to punch in "too early"; that he left that room, where the picnic table is located, to turn on some machinery and that, when he returned, he saw the two men and several others sitting at the picnic table and he saw some other men walking around that room or in the locker room. He testified that a few minutes---not more than 5---before 7 o'clock

55 18/ Mattson, Luoma, LeGassa, Raymond Monti, Westeen, and Vilencia.

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he went to the table and "saw that they weren't going to work" so he said, "Aren't you going to work?" Someone said "no" so he walked toward them and pointed to Luoma, who said "no"; he then pointed to Mattson and said "are you going to work?" and Mattson said "no," and he pointed to Twiggs, and 5 Twiggs said "no."

10 About that time, according to Tersinar, Mike Vilencia said "I have to go to work, I have a family to support," so he told Vilencia to punch in and get on the job. Tersinar also said that he told the others that it was time to go to work; that he said "get out of the plant" to the three people 15 who said they didn't want to go to work; and he testified that, as they left, they took the rest of the pressroom with them.

15 Tersinar admitted that he was at and away from the picnic table several times between the arrival of Mattson and Luoma at 6:30 and his inquiry, just before 7, as to whether the men were going to work, but he testified that he had no conversation with them. He also testified that he had been pacing back and forth in that room but insisted that he was only "watching 20 the machines." He flatly denied having talked to the men at all prior to 5 minutes before 7 when he asked them whether they were going to work.

25 Respondent also produced as witnesses several of the female employees who work as inspectors in the same room where the picnic table and timeclock are located. The one who claimed to have arrived earliest, Genevieve Salo, testified that she arrived between 6:35 and 6:40, having left her home at 6:30 and driven the "mile or so" to the plant; that she took off her winter coat and overshoes in the cloakroom, put on her shoes and jacket, and then entered the room containing the timeclock, the picnic table, and the conveyor belts. She saw "all the men" sitting at the picnic table as she passed on 30 her way to the timeclock; she testified that the table was "crowded," and named five of the men she could recall, while stating that she was "sure there was more." After punching in, she went over to the conveyor belt and sat down. She testified that Tersinar was walking near the picnic table; that "just before time for working" she heard him ask the men whether or 35 not they wanted to work and that the men "picked up their pails and they walked out the door."

40 Mary Anderson testified that she arrived at the plant between 6:45 and 6:50 that morning; that she first went to the cloakroom where she took off her jacket and changed her shoes; that she went into the larger room, punched her timecard and was about to sit down at the picnic table when she noticed that "all the men were there" so she went and sat down with Mrs. Salo near 45 the conveyor belts. After 5 or 6 minutes, she testified, it got to be 2 or 3 minutes before 7 and time to begin work so she walked toward the picnic table to put her purse and lunch pail on it; as she approached the table, she heard Tersinar ask the men whether they were going to work or not, after which they left.

50 Florence Beber testified that she arrived between 6:45 and 6:50, having left home at 6:40 and made a brief stop with her husband. She testified that she left her jacket in the cloakroom, changed her shoes, and entered the inspection room between 6:45 and 6:50. She saw the men sitting at the picnic table as she went to the clock so she punched in and then went over to sit with Mrs. Salo and Mrs. Anderson near the conveyor belts. A few minutes 55 before 7 she walked toward the picnic table and saw Tersinar with the men there; she heard him ask them if they wanted to go to work, after which they picked up their lunch pails and started out of the plant. As the men went out, one of them---she believed it was Luoma---said that she could work if she wanted to.

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5 Patricia Juopperi 19/ testified that she arrived 10 minutes before 7, punched in her timecard, and went to the conveyor belt where the other women were seated. At that time, she believed, most of the pressroom men were at the picnic table and she saw William Tersinar also near it. She testified that she heard Tersinar ask all the men at the picnic table whether they wanted their jobs and they said "no" and walked out. She testified that it was about 3 minutes after she arrived at the plant that the pressroom employees walked out.

10 Verna Morrison testified that she arrived at the plant between 6:50 and 6:55, took "a few minutes" to put away her coat and change from boots to shoes, and that she then went into the room with the picnic table; that when she entered the room she did not see any of the men at the picnic table but that she met them as they were coming out the door with William Tersinar directly behind them. She testified that she heard Tersinar say something similar to "alright, boys, that's all" or "alright, boys, that's it," and that one of the men, Douglas Twiggs, said to her that the women could either work or go home.

20 As stated above in connection with some of the incidents prior to February 26, I cannot regard William Tersinar as a credible witness. That conclusion is reinforced by the conflict between his testimony that on this date, other than cautioning Mattson and Luoma not to punch in "too early," he did not instruct anyone not to punch in, with the testimony of Respondent's witness, Vilencia, who testified that, when he arrived at 6:55, Tersinar told him not to punch in. Tersinar also testified that, although he was pacing to and fro in the room near the picnic table, he was only "watching the machines" but the record is clear that none of the machines in that room---conveyor belts and tumbling machines---had been turned on.

30 Moreover, I find it completely improbable that Tersinar had nothing to say to the men on the morning after being informed that a union organizational campaign was being conducted among them---particularly since the report he received featured "threats" by the union solicitors and his asserted lack of interest in that report is belied by his prompt investigatory telephone call to Johnson. On the contrary, the probability appears to me to lie with the account given by the male employees who testified.^{20/} Accordingly, I find that William Tersinar made the statements set forth in the testimony of the male employees; that he threatened to shut the plant down if the Union came in; threatened that, if the men were represented by a union, they would be required to attend four instead of three presses and that they still would have no breaktime; and that he threatened to lay off or discharge

45 19/ Mrs. Juopperi was called by the General Counsel but only identified her union card; the balance of her testimony was elicited by Respondent on cross-examination.

50 20/ The testimony of the women employees does not contradict that of the men since I find that they minimized the time necessary to change from boots to shoes and tended to make the time of their arrival at the plant earlier than it was. Moreover, they merely testified that they heard nothing until Tersinar demanded to know, less than 5 minutes before 7, whether the men were going to work. Mrs. Salo, who arrived first, testified that when she came in at 6:40 "all the men" were at the picnic table, although Raymond Monti, whom she specifically named, testified that he arrived at 6:50.

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the employees. All of these statements were coercive and violative of Section 8(a)(1) of the Act. Moreover, I find that by these statements, when viewed in context, Tersinar implied that the employees could not remain members of the Union and continue to be employed by Respondent. These statements also gave rise to a belief among the employees that some or all of them were scheduled for immediate discharge because of their self-organizational activity and their answers that they were not going to work unless the others did were an affirmation of their right to remain members of the Union rather than a refusal to go to work. I find that none of the employees quit, as Respondent contends, but that Tersinar's inquiry as to whether they were going to work was simply a part of his diatribe of threats and denunciations which really constituted a demand that, to continue in employment, they would be required to renounce their union activity and which, when most of the men expressed their solidarity with the others, culminated in his discharge of all the employees at the picnic table 21/ except Vilencia. These discharges were discriminatory and for the purpose of discouraging membership in the Union. Accordingly, they were in violation of Section 8(a)(3) of the Act.

20 6. The refusal to bargain

a. Demand and refusal

25 Later in the morning on February 26, Staff Representative Soltis of the Union telephoned Tersinar to request reinstatement for the seven employees who had been discharged. Tersinar refused, saying that they had quit but that he might reemploy one or two of them at some future time. Soltis protested, saying that the men had the right to organize and that a majority had designated the United Steelworkers as their representative. Tersinar said that, if the men wanted a union, he "would have got" them the union representing the employees at the Chicago plant.22/ Tersinar admitted that Soltis told him that a majority of Respondent's employees had authorized the Union to represent them. On the same day, the Union, over Soltis' signature, wrote Respondent that it represented a majority of the employees in a specifically described production and maintenance unit;23/ requested a prompt meeting for bargaining, and offered to submit the signed authorization cards to a representative of the Federal Mediation and Conciliation Service for verification of its claim to majority status.

40 21/ Nels W. Luoma, Verner Mattson, Raymond Monti, George Monti, Douglas Twiggs, Glen LeGassa, and Leonard Westeen. The complaint also alleges that Respondent discharged Gary Laine but there is no evidence that he was present on the morning of February 26 or at any time thereafter. Respondent contends that Laine voluntarily quit by his failure to report for work and, since the record contains no evidence to support the allegation of the complaint as to him, it will be dismissed.

45 22/ This statement is not alleged in the complaint as a violation of the Act.

50 23/ "All production and maintenance employees, at your Wakefield, Michigan Plant No. 2, excluding office clerical and professional employees, guards and supervisors, as defined in the Labor Management Relations Act."

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5 Respondent's list of employees as of February 27 omits the three terminated February 21 and the seven terminated February 26. The names of Gary Laine and George W. Golembeski are also omitted from the list, with notations that these men failed to report for work on the day and evening shifts, respectively, on February 26.^{27/}

10 As noted above, there is no evidence that Gary Laine reported for work on February 26, or any subsequent day, and Respondent's contention that Laine quit as of the beginning of work on February 26 is accepted. The matter of the termination of Golembeski is treated hereafter and his discharge found unlawful. Accordingly, by adding Golembeski and the 10 employees also found to have been unlawfully discharged to Respondent's list of 20 employees as of February 27, I find that there were 31 employees in the unit when the Union requested recognition.

15 15 Respondent does not contest the adequacy of the cards as authorizations of union representation or the validity of any employee's designation but bases its defense upon its contention that the employees terminated on February 21 and 26 had quit and that Golembeski was not unlawfully discharged, so that they were not employees when recognition was demanded and, therefore, their designations may not be considered.

20 25 Since I find that these 11 men were unlawfully discharged, they continued, by virtue of Section 2(3) of the Act, to be employees in the unit. Accordingly, the Union, having been designated as bargaining representative by 19^{28/} of the 31 employees in the unit, represented a majority when it demanded that Respondent bargain with it and Respondent's refusal violated Section 8(a)(5) of the Act.

30 7. Discharge of Golembeski

35 George Golembeski had worked in the pressroom since November 6, 1967, and was on the afternoon shift during the week of February 12 to 16. He was one of those who took a 10-minute lunch break until John Tersinar threatened to discharge anyone who continued to do so. He was ill and did not report for work any day during the following week.

40 On February 26, after the discharge of the seven employees on the day shift, he attended a meeting with the union representative and the discharged employees but, since he was still ill, he did not report for work that afternoon. The next day, while he was still ill and at home, he received a telephone call from LeGassa, who reported that the men on the afternoon shift had been assigned to the day shift.

45 At 6:15 on Wednesday morning, February 28, he telephoned William Tersinar at the plant and asked whether it was true that employees on the afternoon shift had been transferred to the day shift. Tersinar said that the afternoon shift had been discontinued and the employees moved over to the day shift.

50 27/ The letter written by Respondent to the Union on February 27, giving a list of its employees, also omits George Grant and Anton Thorson, who appear on the list prepared for the trial. This discrepancy has not been noted by any party herein and, since it makes no difference in the determination of any issue, it is ignored.

55 28/ The card of Gary Laine is not counted.

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The next day Respondent answered the letter by listing its employees---18 in number---and stating its readiness to bargain "with any organization when shown that said organization has been designated as the collective bargaining representative of our employees."

5 On March 15, the Union responded, offering to meet with the Company on March 25, at the company office "for the purpose of agreement that the United Steelworkers of America, AFL-CIO, has been designated by the majority employees. . . ." and, on the 18th, Respondent wrote, agreeing to the meeting.

10 Pursuant to this exchange of letters, Soltis, representing the Union, met with William Tersinar and Respondent's counsel. Soltis submitted photocopies of 20 signed cards and Tersinar gave them to Eivind Arentz, the plant chemist, who left the room with the photocopies. When Arentz returned, small "x's," 15 not previously there, were on the photos of seven cards.^{24/} Tersinar then refused to recognize the Union on the ground that he saw copies of cards signed by "only five people" who were employees and that he regarded the "other fifteen" as no longer employees because "they refused to work and walked out . . . they quit."^{25/} The meeting lasted only 15 minutes and none 20 was held thereafter.

b. The unit

At the trial, Respondent produced a list of its employees as of February 20, 25 1968, before any of the terminations in issue herein, which contained 34 names. One of these was an office clerk, specifically excluded from the unit for which the Union requested recognition;^{26/} another on this list is John Tersinar, found herein to be a supervisor and, therefore, also excluded. Accordingly, on that date, Respondent had 32 employees in the unit. The 30 list of employees as of February 22 is the same, except for the omission of the three employees terminated on the 21st.

24/ Mrs. Juopperi, Taisto Hendrickson, Clarence Johnson, Eanar Johnson, 35 Mrs. Morrison, Robert Whitburn, and Kathryn Auvinen.

25/ Tersinar's testimony that there were only five employees' cards is refuted by the photocopy sheets which are in evidence and show "x's," on seven 40 cards. His testimony that there were only five cannot be regarded as an attempt to prove the fact---that would be absurd---but as another instance of his readiness to weight his testimony in any way he believed would justify his adamant opposition to union organization at this plant. The number 15---of employees he testified "had quit"---was fixed, however, 45 by his counsel's question, probably by the simple subtraction of Tersinar's conceded 5 employee cards from the 20 card-photos admittedly exhibited at the meeting.

26/ Respondent concedes that the unit is an appropriate one and admitted the allegation thereof in the complaint.

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8. Additional interference, restraint, and coercion

Mrs. Vilencia's pretrial affidavit, which was received in evidence, states that before noon on Monday, February 26, the day following her telephone conversation with William Tersinar, she went to the plant to get some insurance forms and met Tersinar there.^{30/} Tersinar said:

I'm very disappointed. I understand Mike has been mixing with the fellows who have been talking union. I just hope it's not true, I might have to let him go if he is the instigator.

It would be difficult to formulate a threat more clearly than this statement which, I find, Tersinar made to Mrs. Vilencia. It is no less restraint and coercion, violative of the Act, because made to the wife of an employee---particularly one who had already been in communication with Respondent's plant manager on the subject of union activity involving her husband---than if made to the employee.^{31/} Accordingly, I find that by this statement Respondent violated Section 8(a)(1) of the Act.

Robert Whitburn was hired in October 1967, and worked as a press operator on the day shift until February 22, when William Tersinar transferred him to the afternoon shift, and he worked on that shift Friday, February 23.

At 4:40 p.m. on Monday, February 26, Whitburn testified, he reported for work and found both William and John Tersinar standing at the timeclock with employees Clarence Johnson, Eanar Johnson, and Taisto Hendrickson. William Tersinar said that the Company didn't want the Union in there and, if it came in, the doors would be closed. He also said that some of the employees at the Chicago plant had been fired and thought the union there could help them but it never did; that the employees at the Chicago plant didn't like the union and wanted to get rid of it; that if the men at Wakefield did get a union, they wouldn't want it.

Whitburn testified that William Tersinar then asked him whether he had signed a card and, when he answered "yes," Tersinar said: "It didn't help you very much, did it?"

The threat of plant closing is, of course, violative of Section 8(a)(1). Tersinar's inquiry as to whether Whitburn had signed a card was not justified since it was not part of a properly conducted poll of employees to determine whether the Union represented a majority as claimed and, therefore, is also violative of Section 8(a)(1) of the Act.

^{30/} In her testimony, Mrs. Vilencia stated that her visit to the plant to get insurance forms did not occur on the day following the telephone conversation but "quite awhile before that." In view of this contradiction as to the time of the conversation as well as the probabilities of the events involved, I refused to find, as set forth above, that her conversation with Tersinar occurred prior to the discharges of Sibley, Pikka, and Johnson, as the General Counsel contends in his brief. Nothing in Mrs. Vilencia's testimony, however, detracts from the evidence in her affidavit that she had a conversation, in the form set forth therein, with Tersinar, on February 26, and I find that it occurred as set forth.

^{31/} Redwing Carriers, Inc., 125 NLRB 322, 323, enfd. on this point 284 F.2d 397 (C.A. 5; 1960), an almost identical factual situation; see also Oswego Street Supermarkets, 159 NLRB 1735, 1737.

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Golembeski said he would be ready to go to work that day but Tersinar answered, according to Golembeski: "No, you'd better stay home, too."

5 Tersinar testified that Golembeski called in on March 1, "four days after the 26th of February" and asked whether his job was still open; that he answered that he had warned Golembeski about staying home without calling in and that, since he, Golembeski, had not called in for 4 days, he could stay home. Tersinar testified that Golembeski's employment was terminated on March 1, the day he called in.

10 It is important to note that, on the basis of Tersinar's testimony, Golembeski's employment was not terminated by Respondent until he called in and that this occurred, as Tersinar insisted, after 4 days of absence.^{29/}

15 As Tersinar testified in connection with the Washburn discharge, however, any employee who fails to report for work is required, pursuant to company policy and the rule posted on the bulletin board, to call in "within three working days" and failure to do so results in his removal from the payroll. Had this rule been applied to Golembeski, as it was to Washburn, Golembeski would have been routinely terminated no later than the beginning of the fourth day of his absence---Thursday, February 29---and Tersinar would, I am convinced, have pointed this out to Golembeski when he called. Moreover, Tersinar did not controvert Golembeski's testimony that he had been absent the entire previous week but nevertheless, according to his own testimony, Tersinar's reference to Golembeski's absence specified that it was for 4 days. It is a fair inference that Golembeski had already given Respondent proper notice of the reason for his absence some time during the prior week and had, therefore, complied with the company rule.

20 30 For these reasons, as well as my refusal to regard Tersinar as a credible witness, I reject Tersinar's testimony that he referred to Golembeski's absence as a reason for discharge and I accept the testimony of Golembeski that, when he called in on Wednesday, stating his readiness to go to work that day, Tersinar's answer was: "No, you'd better stay home, too." This answer, particularly in its use of the word "too," convinces me, and I find, that Tersinar, recalling Golembeski's participation in the taking of the 10-minute lunch break, bracketed him with the seven employees he had discharged 2 days earlier, after he learned of the Union's organizing campaign. Accordingly, I find that Respondent's real reason for discharging Golembeski was its belief 35 40 that he was involved in the organizational activity and that its purpose was to discourage union membership or activity among its employees. It follows, therefore, that the discharge was violative of Section 8(a)(3) of the Act.

45 29/ Tersinar's testimony that he discharged Golembeski for unreported absence on March 1 is also contradicted by the fact that, when he listed the plant employees in his letter to the Union on February 27, Golembeski's name was not included. Moreover, it is inconsistent with the fact that, 50 on the list of employees as of February 27, prepared for the trial of this case, Golembeski's name is also omitted with the explanatory note that he had failed to report on the 26th and had called in on the 29th.

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Whitburn also testified that, some time in April, he was standing with the plant carpenter and employees Grant and Swearingen near the office, when Plant Superintendent Tersinar came out and told them that he had orders from Chicago to close the plant because of the Union's activity but that he and the plant chemist had purchased homes in the area and, therefore, he wanted to keep the plant open. He also said that, if the Union came in, he would close the plant. Whitburn testified that he heard Tersinar make the same statement to other employees in the plant about the same time. While Tersinar denied making these statements, I reject his denial and find that they were made. By these statements, Respondent violated Section 8(a)(1) of the Act.

9. The discharge of Whitburn

The facts concerning this incident are not in dispute. Robert Whitburn, an employee since October 15, 1967, worked as usual Friday, May 3, on the afternoon shift. On Sunday, May 5, he learned of a wedding in Superior, Wisconsin, 115 miles away, which he was to attend. Accordingly, he went to Superior and did not report for work on either Monday or Tuesday, May 6 or 7. He conceded that he did not inform Respondent of his proposed absence and did not call in on either of those days.

On Wednesday, May 8, Whitburn reported for work at the usual time, 6:45 p.m., but could not find his timecard in the rack. He went into the office and asked Plant Superintendent Tersinar where his card was. Tersinar said: "We don't need you no more, you're fired." Whitburn asked for the reason and Tersinar said he had missed too much work; Whitburn protested that he hadn't missed as much work as employee Dave Swearingen, whereupon Tersinar responded that Swearingen had also been discharged and added that Whitburn was supposed to call in but hadn't done so.

Respondent's stated defense to the allegation of the complaint concerning Whitburn's discharge was that the employee "was discharged for not complying with the rules . . . posted on the bulletin board." In support, Respondent produced a sheet of paper which, plant chemist Arentz testified, had been posted on the bulletin board "right next" to the timeclock a couple of months after the plant began to operate in July 1967 and had remained there until removed the day before the August 14 session of the trial for use in this case. This notice reads as follows:

Any employee who can not show for work, is required to call this office or have someone call, within 3---three---working days. If no message has been received by such time, the employee will be removed from the payroll.

Management

Whitburn denied having ever seen this notice. He testified, however, that he didn't know how often he looked at the bulletin board, saying, "Every day, I imagine." His testimony, considering the hesitant manner in which it was given, is not sufficient to overcome Respondent's evidence on this point and I find that this notice was posted on the bulletin board.

Tersinar testified that he discharged Whitburn "for three or four different reasons" but specified that, when he actually terminated Whitburn's employment on May 8, the reasons were his absenteeism and his failure to call in. Tersinar also testified that his other reasons included the fact that Whitburn was an inefficient employee, that he made "an awful lot of rejects" and that he "was holding back production."

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Whitburn's timecard for the week May 6--11 shows no entry except the notation, in the space for Thursday, "Disch 5/9/68" which, plant chemist Arentz testified, he inserted at 7 a.m. on Thursday, May 9, at the direction of William Tersinar.

5 The General Counsel's case with respect to Whitburn draws a comparison between this employee and employee Swearingen who, he contends, was absent at least as often as Whitburn and, when discharged for absenteeism, was rehired.^{32/} Reliance is also placed upon Respondent's union animus as demonstrated by the February discharges and the coercive statements of William Tersinar; upon the fact that Whitburn had signed a union card---known to Respondent since March 25; upon the contention that Tersinar improperly applied the posted rule to Whitburn; and upon Tersinar's shifting reasons for Whitburn's discharge.

10 15 Respondent's union animus has been amply demonstrated by Tersinar's conduct in the incidents described above in this decision. Moreover, the record shows that Tersinar knew that Whitburn had signed a union card and that Swearingen had not. It is not, however, clear that Tersinar's reasons for discharging Whitburn were shifting or false, or that Whitburn's admitted shortcomings were so similar to those of Swearingen that upon the differences in Respondent's treatment of the two men an inference of discrimination is required to be drawn. Tersinar testified that, although Swearingen was guilty of considerable absenteeism, he or his wife usually called when he could not report ^{33/} and that Swearingen was a competent employee. Tersinar also testified that he rehired Swearingen upon Swearingen's promise to report regularly.^{34/} Moreover, there is no evidence that Whitburn promised to do better in the areas of dissatisfaction or that he applied to be rehired.

20 25 30 There is no dispute that Whitburn absented himself from work on May 6 and 7 without notifying Respondent and Whitburn's own testimony shows that Tersinar referred to the fact that an absent employee was "supposed to call in." Tersinar's reference at the time, to Whitburn's absenteeism ^{35/} and his

35 ^{32/} Tersinar testified, without contradiction, that Swearingen was discharged for absenteeism on May 6; that he was rehired May 13 on his promise to report more regularly and that he was finally discharged, again for absenteeism, on July 13.

40 ^{33/} Whitburn testified that on one occasion in April Swearingen was absent 2 days and, on the 3d day when he asked Tersinar where Swearingen was, Tersinar answered: "I don't know, he hasn't called in." While Tersinar was not questioned concerning this testimony and did not deny it specifically, Whitburn's comparison between himself and Swearingen, when it reached this point, became too perfect for belief and I do not credit it.

45 50 ^{34/} Although I have rejected William Tersinar's testimony in most instances where it was contradicted by credible testimony of other witnesses or incompatible with the probabilities of the situation, neither of these is present here and I do not feel justified in rejecting his testimony on this point.

55 ^{35/} Whitburn admitted that "some time" in March he came to the plant to pick up his paycheck, although he had not reported for work that day because of a sore throat, and that Tersinar said to him: "Missing too much work is going to hurt you." Whitburn also testified that, between that date and the day of his discharge, he was absent 4 or 5 days, not counting the 2 days immediately preceding it.

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5 testimony that he took into consideration his unfavorable estimate of Whitburn's competence do not, in my view, convert his stated reason for firing Whitburn into a pretext. Finally, notwithstanding the General Counsel's suggestion that Tersinar's interpretation of the rule was "strained," I cannot find that it was so obviously unjustified by its text that I am required to infer that this, also, was a pretext.

10 To sum up my view of this incident, it appears to me that at the time of Whitburn's discharge, the atmosphere at the plant had lost the highly charged quality created in Tersinar's mind by the activities of the Union and which, I have found, made the February discharges unlawful. Furthermore, 15 it seems to me that Whitburn's absence from work for two days without notification may well be considered by an employer as employee conduct justifying discipline or discharge. Accordingly, I cannot find that the General Counsel has proved, by a fair preponderance of the evidence, that Whitburn was discriminatorily discharged to discourage membership in the Union and I shall recommend dismissal of the complaint insofar as it so alleges.

20 V. The Effect of the Unfair Labor Practices Upon Commerce

25 The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. The Remedy

30 Having found that Respondent has engaged and is engaging in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action, including the posting of an appropriate notice, to effectuate the policies of the Act.

35 Having found that Respondent discriminatorily discharged Raymond Sibley, Donald Pikka, Herbert O. Johnson, Nels W. Luoma, Verner Mattson, Raymond Monti, George Monti, Douglas Twiggs, Glen P. LeGassa, Leonard Westeen, and George W. Golembeski in violation of the Act, it will be recommended that they be offered immediate and full reinstatement to their former, or substantially equivalent, positions without prejudice to their seniority and other rights and privileges and that they be made whole for any loss of pay they may have suffered, computed in the manner prescribed by the Board in F. W. Woolworth Company, 90 NLRB 289, and with interest as prescribed in Isis Plumbing & Heating Co., 138 NLRB 716.

45 Having found that the Union is the designated representative of Respondent's employees in an appropriate unit and that Respondent has engaged and is engaging in an unfair labor practice by refusing to bargain collectively with it, it will be recommended that Respondent cease and desist from refusing so to bargain; that it shall, upon request, so bargain and, if an agreement is reached, embody such agreement in a signed contract.

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In view of the nature and extent of the unfair labor practices found herein to have been engaged in by Respondent, which indicate its determination to interfere aggressively with its employees' rights of self-organization and its rejection of the principle of collective bargaining, I shall recommend 5 a broad cease-and-desist order herein.^{36/}

Upon the basis of the above findings of fact and upon the entire record in the case, I reach the following:

10

Conclusions of Law

1. Quality Rubber Manufacturing Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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2. United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

20

3. By coercively interrogating its employees concerning their union membership and activities; by threatening its employees that, if they exercised their rights of self-organization, scheduled benefits would be withheld; they would be subjected to more onerous conditions of employment, they would be discharged and operation of their place of employment would be terminated, said Employer has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act and has engaged 25 in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

30

4. By terminating the employment of Raymond Sibley, Donald Pikka, and Herbert O. Johnson because they engaged in concerted activities for the purpose of mutual aid or protection, Respondent interfered with, restrained, and coerced said employees in the exercise of rights guaranteed in the Act and engaged and is engaging in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.

35

5. By terminating the employment of Raymond Sibley, Donald Pikka, and Herbert O. Johnson because they engaged in concerted activities for the purpose of mutual aid or protection, Respondent discriminated against them in their tenure of employment to discourage their membership in a labor organization and engaged and is engaging in an unfair labor practice within 40 the meaning of Section 8(a)(3) of the Act.

45

6. By terminating the employment of Nels W. Luoma, Verner Mattson, Raymond Monti, George Monti, Douglas Twiggs, Glen P. LeGassa, Leonard Westeen, and George W. Golembeski because of their membership in, or activities on behalf of the above-named labor organization, Respondent has discriminated against them to discourage their membership in the said labor organization and has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

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7. The employees of Respondent in the following described unit constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

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^{36/} See N.L.R.B. v. Entwistle Mfg. Co., 120 F.2d 532, 536 (C.A. 4; 1941); Wabana, Inc., 146 NLRB 1162, 1186.

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All production and maintenance employees at the Wakefield, Michigan, plant, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

5 8. At all times since February 26, 1968, United Steelworkers of America, AFL--CIO, has been the exclusive representative of the employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

10 9. By refusing on February 26, 1968, and thereafter, to bargain collectively with the above-named labor organization, Respondent has engaged and is engaging in an unfair labor practice within the meaning of Section 8(a)(5) of the Act.

15 10. By the commission of the aforesaid unfair labor practices, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

20 11. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

25 12. Respondent's discharge of Robert J. Whitburn was for cause and it did not thereby engage in an unfair labor practice.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and the entire record in this case, it is recommended that Quality Rubber Manufacturing Company, Inc., Wakefield, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating its employees concerning their membership in or activities on behalf of United Steelworkers of America, AFL--CIO, or any other labor organization, threatening employees with loss of benefits, threatening the imposition of more onerous conditions of employment or threatening loss of employment for exercising the rights of concerted activity for mutual aid or protection guaranteed in Section 7 of the National Labor Relations Act, as amended.

(b) Refusing, upon request, to bargain with the said labor organization as the collective-bargaining representative of its employees in the following described unit:

45 All production and maintenance employees at the Wakefield, Michigan, plant, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

50 2. Take the following affirmative action to effectuate the policies of the Act:

(a) Offer to Raymond Sibley, Donald Pikka, and Herbert O. Johnson immediate and full reinstatement to their former positions, or to positions substantially equivalent to those which they held immediately prior to February 21, 1968, without prejudice to their seniority and other rights and privileges; offer to

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Nels W. Luoma, Verner Mattson, Raymond Monti, George Monti, Glen P. LeGassa, Leonard Westeen, and George W. Golembeski immediate and full reinstatement to their former positions, or to positions substantially equivalent to those which they held immediately prior to February 26, 1968, without prejudice to their seniority and other rights and privileges; and make each of them whole, in the manner set forth in the section of the Decision entitled "The Remedy," for any loss of pay they may have suffered by reason of the discrimination against them.

(b) Notify Raymond Sibley, Donald Pikka, Herbert O. Johnson, Nels W. Luoma, Verner Mattson, Raymond Monti, George Monti, Glen P. LeGassa, Leonard Westeen, and George W. Golembeski, if presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after discharge from the Armed Forces.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Recommended Order.

(d) Upon request, bargain with United Steelworkers of America, AFL-CIO, as the collective-bargaining representative of its employees in the unit described above, with respect to rates of pay, hours of employment, and other terms and conditions of employment and, if an agreement is reached, embody such agreement in a signed contract.

(e) Post at its plant in Wakefield, Michigan, copies of the attached notice marked "Appendix."^{37/} Copies of said notice, on forms provided by the Regional Director for Region 30, after being duly signed by its representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

^{37/} In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

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(f) Notify the Regional Director for Region 30, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.^{38/}

5 IT IS FURTHER RECOMMENDED that the allegations of the complaint, insofar as not found in the Decision herein, be dismissed.

Dated at Washington, D.C. DEC 6 1968

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CERTIFIED TRUE COPY
O. W. FIELDS
EXECUTIVE SECRETARY, NLRB
DATE DEC 6 1968

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55 ^{38/} In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 30, in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith."

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APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

After a trial at which all sides had the opportunity to give evidence, it has been found that we, Quality Rubber Manufacturing Company, Inc., violated the National Labor Relations Act, and that we should be ordered to post this notice to inform our employees of their rights under that Act.

The Act gives all employees these rights:

- To organize themselves and to act together for mutual aid or protection;
- To form, join, or help unions;
- To bargain as a group through a representative they choose;
- To refuse to do any or all of these things.

We assure you that WE WILL NOT do anything that interferes with these rights; we specifically assure you that WE WILL NOT ask any employee why he joined the Union and WE WILL NOT threaten you with harder working conditions, cancellation of pay raises, loss of your jobs or that the plant will close, if you choose to be represented by a union.

It has also been found that United Steelworkers of America, AFL-CIO, was chosen by a majority of our employees to represent them as their only collective-bargaining representative in the bargaining unit which is:

All production and maintenance employees at the Wakefield, Michigan, plant, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

Accordingly, if that Union requests, WE WILL bargain with it on wages, hours, and conditions of employment, and any agreement we reach will be put in writing and signed.

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It has also been found that we discharged Raymond Sibley, Donald Pikka, and Herbert O. Johnson because they asked for and took a 10-minute break during their shift and that this was conduct for mutual aid which is protected by the Act; that we discharged Nels W. Luoma, Verner Martson, Raymond Monti, George Monti, Douglas Twiggs, Glen P. LeGassa, Leonard Westeen, and George W. Golembeski because they joined the Union, and that all of these discharges violated the Act.

WE WILL, therefore, give back to these employees the jobs which they held when they were discharged, with all their seniority, and make up any pay which they lost, plus 6 percent interest.

If any of these employees is now in the Armed Forces of the United States, WE WILL notify them of their right to full reinstatement, upon application, in accordance with the Selective Service Act and the Universal Military Training and Service Act, as amended, after their discharge from the Armed Forces.

QUALITY RUBBER MANUFACTURING COMPANY, INC.
(Employer)

Dated _____ By _____ (Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 2d Floor, Commerce Building, 744 North 4th Street, Milwaukee, Wisconsin 53203, Telephone 414--272--3861.



(4) The Trial Examiner failed to order the Employer to grant the National Labor Relations Board, through one of its agents, an opportunity to enter upon Company property and indicate to the employees their rights under the National Labor Relations Act and answer questions from said employees (TXD 25-26).

Respectfully submitted,

UNITED STEELWORKERS OF AMERICA,
AFL-CIO

By: James D. English

James D. English
Assistant General Counsel

Bernard Kleiman
General Counsel
1500 Commonwealth Building
Pittsburgh, Pennsylvania 15222

Dated: January 24, 1969

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARDQUALITY RUBBER MANUFACTURING
COMPANY, INC.

and

Case 30-CA-780

UNITED STEELWORKERS OF
AMERICA, AFL-CIOLEGAL DEPT.
U. S. A.
MAY 23 1959
PITTSBURGH, PA.

DECISION AND ORDER

On December 6, 1968, Trial Examiner Sidney D. Goldberg issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that the Respondent had not engaged in other unfair practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the Respondent and the Charging Party filed exceptions to the Trial Examiner's Decision and supporting briefs, the Charging Party limiting its exceptions to questions of remedy. The General Counsel filed a brief in support of the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record

i/ The Respondent's request for oral argument is hereby denied as the briefs and record adequately present the issues and the positions of the parties.

D-1941

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in the case, and hereby adopts the findings, conclusions, and
recommendations ^{4/} of the Trial Examiner, as modified herein.

In view of the Respondent's numerous violations of the Act directly preceding and subsequent to the Union's recognition and bargaining requests, we find that the Respondent acted in manifest bad faith by its refusal to bargain with the Union as the majority representative of its employees in an appropriate unit. We thus agree with the Trial Examiner's finding that the Respondent's refusal to bargain violated Section 8(a)(5) and (1) of the Act. We further find that an order directing the Respondent to bargain with the Union, upon request, is necessary to remedy the effects of its unfair labor practices. The record shows, and we so find, that the Union represented a majority of the employees in an appropriate unit and the Respondent, by its course of unfair labor practices, engaged in unlawful

2/ The Respondent excepts to portions of the Trial Examiner's Decision on the grounds of alleged bias and partiality. After a careful review of the record we specifically reject the Respondent's contentions, there being no evidence that the Trial Examiner prejudged this case or made prejudicial rulings. Canton Sign Co., 174 NLRB No. 133. The Respondent further excepts to various findings of the Trial Examiner, on the ground that he erred in crediting the testimony of certain witnesses. It is the established policy of the Board not to overrule a Trial Examiner's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that the resolutions were incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3, 1951). We find no sufficient basis for disturbing the credibility findings in this case.

3/ We find, in agreement with the Trial Examiner, that the discharge of Sibley, Pikkala, and Johnson violated Section 8(a)(1) of the Act, and we adopt his recommended remedy as to them. In these circumstances, we find it unnecessary to decide whether these discharges also violated Section 8(a)(3). American Art Clay Company, Inc., 142 NLRB 624, footnote 1; Pepperidge Farm, Inc., 134 NLRB 1245, footnote 1.

4/ The Charging Party excepts to the Trial Examiner's failure to recommend that the Respondent be ordered to make employees whole for losses suffered as a result of the Respondent's refusal to bargain; mail copies of the notice to employees; and permit the Union to address employees, and a Board agent to read the notice and answer questions, on company property. We deem it inappropriate in this case to depart from our existing policy with respect to remedial orders in cases involving violations of Section 8(a)(5), or violations of Section 8(a)(3) and (1) where, as here, the record affords insufficient basis for additional remedial action. We therefore find no merit in these exceptions. See, Monroe Auto Equipment Company, Hartwell Division, 164 NLRB No. 144; Marine Welding and Repair Works, Inc.; Williamson Engine and Supply, Inc.; Greenville Manufacturing and Machine Works, Inc.; Greenville Propeller Work, Inc., 174 NLRB No. 102, footnote 5.

conduct designed to prevent the Union from establishing its majority status and, in so doing, clearly evinced a determination to reject the principle of collective bargaining. Therefore, we shall order the Respondent to bargain, upon request, with the Union to remedy both its violations of Section 8(a)(5) and its violations of Section 8(a)(1) and (3) of the Act.^{5/}

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Order recommended by the Trial Examiner, and hereby orders that the Respondent, Quality Rubber Manufacturing Company, Inc., Wakefield, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as modified below.

1. Add the following as paragraph 1(b) of the Recommended Order, and renumber 1(b) as 1(c):

(b) Discouraging membership in United Steelworkers of America, AFL-CIO, or any other labor organization of its employees, by laying off or discharging its employees or discriminating against them in any other manner in respect to their hire or tenure of employment, or any other term or condition of employment.

2. Add the following as paragraph 1(d) of the Order:

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed to them by Section 7 of the Act, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, in conformity with the proviso of Section 8(a)(3) of the Act.

^{5/} See Bryant Chucking Grinder Company, 160 NLRB 1526, 1530, enfd. 389 F.2d 565 (C.A. 2) (Member Jenkins dissenting on other grounds); Fabricators, Incorporated, 168 NLRB No. 21, p. 4; Louisburg Sportswear Co., 173 NLRB No. 101.

3. Substitute the following for the fourth full paragraph
of the Notice:

We assure you that WE WILL NOT do anything that interferes with these rights; we specifically assure you that WE WILL NOT discourage you from membership in UNITED STEELWORKERS OF AMERICA, AFL-CIO, or any other labor organization, by discharging, laying off, or discriminating against you in any other manner with respect to hire or tenure of employment or any other term of employment. We further specifically assure you that WE WILL NOT ask any employee why he joined the UNION and WE WILL NOT threaten you with harder working conditions, cancellation of pay raises, loss of your jobs or that the plant will close, if you choose to be represented by a Union.

Dated, Washington, D.C. MAY 21 1969

Frank W. McCulloch, Chairman

Howard Jenkins, Jr., Member

Sam Zagoria, Member

(SFAL)

NATIONAL LABOR RELATIONS BOARD

178 NLRB No. 117

D-9170
Wakefield, Mich.UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARDQUALITY RUBBER MANUFACTURING
COMPANY, INC.

and

Case 30-CA-780

UNITED STEELWORKERS OF AMERICA,
AFL-CIOLEGAL DEPT.
U.S.A.
2 1969
PITTSBURGH, PA.

SUPPLEMENTAL DECISION AND ORDER

On May 21, 1969, the National Labor Relations Board issued a
^{1/}
Decision and Order in the above-entitled proceeding, finding that the
Respondent had violated Section 8(a)(1), (3), and (5) of the National
Labor Relations Act, as amended, and ordering Respondent to cease and desist
therefrom and take certain affirmative action. Thereafter, upon its own
motion, the Board has decided to reconsider its finding that Respondent
violated Section 8(a)(5) of the Act and its order requiring Respondent to
bargain upon request with the Union, in light of the Supreme Court's
decision in N.L.R.B. v. Gissel Packing Company, 395 U.S. 575. On
August 6, 1969, the Board notified the parties of its decision to reconsider,
and invited statements of position. Statements of position have been
received from the Employer, the Charging Party, and the General Counsel.

Pursuant to the provisions of Section 3(b) of the National Labor
Relations Act, as amended, the National Labor Relations Board has delegated
its powers in connection with this case to a three-member panel.

We have again reviewed the entire record including the statements
of position and, having reconsidered the matter, affirm our original finding
and order in this respect for the reasons stated below. In its original
decision the Board found, in agreement with the Trial Examiner, that
Respondent had engaged in numerous violations of Section 8(a)(1) and (3) of the Act
at various times material hereto, in that Respondent told employees that another
employee had been fired "Because he's a union organizer"; coercively interrogated

two employees concerning their union membership, and stated to them that Respondent did not want a union in the plant; interrogated another employee as to whether he had signed a union card; threatened employees that if the Union came in Respondent would close the plant, and/or increase the employees' work load and layoff current workers; promised the employees a wage increase if they would forego organization; threatened the wife of an employee that the employee might have to be let go "if he is the Union instigator"; and discharged 11 employees because of their union or concerted activities.

With respect to the Section 8(a)(5) allegation, the Board found no merit in Respondent's contentions that authorization cards signed by 11 employees, found to have been unlawfully discharged, should not be counted; that authorization cards are not an appropriate method of determining majority status, and that a Board election should be conducted. The Board found that the Union represented a majority of Respondent's employees in an appropriate unit and that Respondent's refusal to bargain was violative of Section 8(a)(5) and (1); and the Board ordered Respondent, inter alia, to bargain upon request with the Union.

Having carefully reconsidered this matter in the light of the Supreme Court's decision in the Gissel Packing Company case, supra, we arrive at the same conclusions as we did before; however, in doing so we do not rely, as a predicate for our finding of a Section 8(a)(5) violation, on our earlier subsidiary finding that Respondent acted in bad faith in refusing to bargain with the Union as the majority representative of its employees in an appropriate unit. In our opinion, Respondent's extensive violations of Section 8(a)(1) and (3), as summarized above, not only precluded the holding of a fair election, but were of such pervasive and aggravated character as to warrant the finding which we made in our original decision, and which we reiterate here, that an order directing the Respondent to bargain with the Union is necessary to repair their

unlawful effects. The aforementioned conduct has undermined the Union's majority, and caused an election to be a less reliable guide to the employees' free choice than the signed cards by which they designated the Union to represent them. We find, accordingly, that by refusing the Union's request and engaging in the aforesaid unfair labor practices, Respondent violated Section 8(a)(5) and that an order requiring the Respondent to recognize and bargain with the Union is appropriate to remedy its violation of that section, as well as to remedy the other unfair labor practices found.

Accordingly, we hereby reaffirm the Decision and Order heretofore issued in this case.

SEP 3 0 1969

Dated, Washington, D. C.

Frank W. McCulloch,

Chairman

Howard Jenkins, Jr.,

Member

Sam Zagoria,

Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

1

BEFORE THE NATIONAL LABOR RELATIONS BOARD
Thirtieth Region

----- X -----

In the Matter of:

QUALITY RUBBER MANUFACTURING
COMPANY, INC.

and

UNITED STEELWORKERS OF
AMERICA, AFL-CIO

Case No.
30-CA-780

----- X -----

Council Room
City Hall
Wakefield, Michigan
Wednesday, June 26, 1968

The above-entitled matter came on for hearing, pursuant to notice, at
10:00 o'clock a.m.

BEFORE:

SIDNEY D. GOLDBERG, Trial Examiner

APPEARANCES:

IVAN D. WRIGHT, Esq.

114 S. Suffolk, Ironwood, Mich., ap-
pearing for the Respondent

ROBERT A. BURNS, Esq.

312½ Sunday Lake St., Wakefield,
Mich., appearing for Respondent

JAMES M. COLLINS, Esq.

Bridges and Collins, 701 Teal Lake Ave.,
Negaunee, Michigan, appearing for
Charging Party

JOSEPH SOLTIS

Staff Rep., United Steelworkers of
America, Box 295, Caspian, Mich., ap-
pearing for Charging Party

DENNIS M. SELBY, Esq.

744 N. 4th St., Milwaukee, Wis., 30th
Region, NLRB, appearing as Counsel
for General Counsel

* * * * *

4 MR. SELBY: At this time I would offer the formal document being General Counsel's Exhibits 1(a) through 1(1). 1(1) is the index and description of the formal documents. Copies of the formal documents and the index of the formal documents have been shown to all parties.

TRIAL EXAMINER: Mr. Wright, any objection?

5 MR. WRIGHT: No.

TRIAL EXAMINER: It is received.

(General Counsel's Exhibit 1(a) through (1) for identification was received in evidence.)

* * * * *

7 MR. SELBY: General Counsel proposes the following amendments to the Complaint in the captioned case; amend paragraph 5(d) to read as follows, quote: "On or about February 25 and 26 and during March and April, 1968, in threatening that the plant would close if the union came into the plant," end of quote.

MR. WRIGHT: Is that the only one?

MR. SELBY: No sir.

TRIAL EXAMINER: Suppose we take them up individually.

8 Do you have any objection to that amendment?

MR. WRIGHT: Yes, we do, we object to an amendment of the Complaint at this late stage of the game without serving on us regular notice, without giving us an opportunity to either file an Answer or make any

necessary investigation which we might want to make on the basis of the additional charges. I think it comes entirely too late.

TRIAL EXAMINER: Well, of course, I don't follow any highly rigorous procedure in an amendment of the Complaint. It's a question of justice and a fair hearing. There is the outline of the allegation in 5(d), it simply extends it two months. It may well be that the evidence will be such that you can investigate it very quickly or you will be able to meet it on the basis of the evidence that's adduced here by the General Counsel. Should it become proper to give you an opportunity to investigate and meet this, I'll always be open to that kind of motion, if justice requires it; but, I don't see that the technical claim, one, that it's late, and, two, that you weren't given any more formal notice, necessarily prejudices your rights. I'm going to grant that motion. You will remember that it's subject to any application you may have for additional time to meet it, if that should become necessary. In my experience I find that most of the time it doesn't. We have no trouble at all where it's simply an extension of time, more of the same, company counsel has no difficulty meeting that as a general thing. If it should be difficult you

9 make your application.

* * * * *

MR. SELBY: Add a new paragraph, numbered "8", as follows, quote:
"On or about May 5, 1968, the Respondent discriminatorily terminated Robert Whitburn and at all times since that date has failed and refused to re-employ him, all because of his union sympathy and in order to discourage the union membership and activities of his fellow employees," end quote.

* * * * *

12 TRIAL EXAMINER: Well, Mr. Selby, I'm entirely sympathetic with the feelings that you have, and I'm sure everybody else has, that the time and money of all persons, including the Government, should be saved. On the other hand, I will not elevate that over the process of due justice that is

required to be followed in all our judicial proceedings, particularly in the one at which I am presiding, because I am the one who has the feeling about it and I'm the one upon whom that burden is placed by the Government. I think that the application is entirely too flimsy at this time. I'm not derogating from your investigation or from the facts of Mr. Whitburn's discharge; they may justify not only a Complaint, but an Order and a decree of the Court, and whatever other processes of the Government are available to enforce his rights and protection. But, on the basis of your statement I am not going to combine a brand new case with this one at this time, particularly since the rules give the Respondent the time they need to answer. There's no opportunity here to answer and he's got ten days to answer. No, the

13 motion is going to be denied, without prejudice to its renewal at the end of the case at which time I will consider it in the form which you yourself suggested; that is, of holding the case open for a new session on that point. I recognize there are advantages in having it all done in a particular case before a single Trial Examiner. That is an appropriate method of saving time and expense, but not at the expense of a fair hearing, and I don't think that Respondent would have a fair hearing at this time on Whitburn under the circumstances that you laid out in your statement. You are, of course, as you well know, at liberty to appeal my ruling to the Board, and if the Board reverses me I will stand reversed. Until that time the motion is denied.

Any others?

MR. SELBY: Yes sir. Paragraph 11, General Counsel proposes that subparagraph "a" be amended to read as follows, quote: "Engaging in the conduct described above in paragraphs 5, 6 and 7 above," end of quote.

* * * * *

15 TRIAL EXAMINER: Of course, it's only a conclusion of law, really, it's not a factual allegation at all. That motion is granted. Any others?

MR. SELBY: No, Your Honor.

* * * * *

20 TRIAL EXAMINER: All right. Mr. Wright, do you wish to make a statement at this time?

MR. WRIGHT: Yes, I think I do.

Now, as indicated by the —

TRIAL EXAMINER: Excuse me, Mr. Wright, you're not summing up, you're making an opening statement.

MR. WRIGHT: I realize that.

TRIAL EXAMINER: All right.

MR. WRIGHT: As indicated by the Answer that we have filed in this case, we deny the various allegations that Mr. Selby has given. Now, it is our contention that nobody in connection with management at anytime made any of these derogatory statements in regard to the union that Mr. Selby has related.

TRIAL EXAMINER: All right.

MR. WRIGHT: As to the incident of February 21, 1968, involving Mr. Sibley, that Mr. Sibley was discharged for misconduct and not for union activities, and the other two men —

21 TRIAL EXAMINER: What was the misconduct, please?

MR. WRIGHT: Horsing around, throwing parts and small steel pieces in places where they might cause injury to employees.

TRIAL EXAMINER: Very well.

MR. WRIGHT: And that he had done it on several occasions prior thereto, so that it wasn't anything new.

As to the other two employees who left at that time, that they walked out on their own and they were not discharged, that they walked out because

of the discharge of Sibley and not because of anything that the management did, and that they were not discharged.

TRIAL EXAMINER: All right.

MR. WRIGHT: And, so far as the incident on the 26th of February is concerned, there were no statements with regard to any union made by Mr. Tersinar, that when he went to the plant that noon these men were there and they had not taken the usual steps for going to work, and that he asked them if they were going to work, and they didn't move. Then he told them they could go to work if they wanted to, or if they didn't want to go to work they could leave, and they got up and left without a word.

TRIAL EXAMINER: Proceed. Anything else?

MR. WRIGHT: And, I think that's all at this time because, as I see it, the main issue in this case is whether or not these men were discharged or whether they left of their own accord.

TRIAL EXAMINER: What is your position on the representation by the union of the men?

MR. WRIGHT: Well, as I told Mr. Selby in this telephone conversation I had with him some time ago, the company has no objections to a union. In fact, we offered to give them an election and if the employees want a union, if the majority vote for it, we have no objection. In fact, this company is a branch of a company in Chicago that has had a union for years and has never had a strike. So, the company has absolutely no anti-union bias or prejudice. They've been offered that, and also at the time this thing came up, according to the information we got, if the union had a majority we weren't sure of that on the card count, and the Examiner knows card counts aren't the most satisfactory way of determining it.

TRIAL EXAMINER: Mr. Wright, let me not permit you to mislead yourself. As the law now stands, a card count can be a perfectly valid basis

for a bargaining order. Until Congress or the Board changes the law that is the law. Now, I'm familiar with the cases, I've been involved in many of them. Mr. Selby, what's the Regional office's position on an election?

MR. SELBY: Mr. Examiner - I'm sorry - Your Honor, there have been circumstances where, if the Charging Party was agreeable to proceeding in this fashion, that we have agreed to proceeding to an election in Joy Silk Mills type cases. This would have to be a determination by the Charging Party or the Regional office would not reach an agreement to that effect.

23

TRIAL EXAMINER: Has the Charging Party considered the problem?

MR. SELBY: May I say one thing, Your Honor, before we proceed further? Of course, any election would involve a question of eligibility as to the people whom we have indicated were improperly discharged. So, I really think before we even reach that point that maybe we ought to determine whether or not the Employer's willing to put these -

TRIAL EXAMINER: I don't disagree with you, but I want it on the record. I'm not going to press the Charging Party on the point. Anything else, Mr. Wright?

MR. WRIGHT: No, Your Honor. The thing is, as I said before, the main question here is whether or not these men quit of their own accord or whether they were discharged, because it's simply a question, as Mr. Selby said, of eligibility to vote. Now, their position - our position all along is that we've had no objection to an election.

TRIAL EXAMINER: Looks like we've got a case on our hands.

MR. WRIGHT: Yes, you have a case on your hands, as I say, with regard to whether these men were discharged.

24

TRIAL EXAMINER: All right. Anything else, gentlemen, before we call witnesses? Does Charging Party wish to make a statement?

MR. COLLINS: No, Your Honor.

* * * * *

GLENN LEGASSA

was called as a witness by and on behalf of General Counsel and, after being sworn, was examined and testified as follows:

* * * * *

DIRECT EXAMINATION

Q. (By Mr. Selby) Your address, Mr. LeGassa? A. Route 1, Box
25 522. Wakefield, Michigan.

Q. Were you ever employed by the Quality Rubber Manufacturing Company? A. Yes, I was.

Q. Over what period of time? A. From June of '67 to February of '68.

Q. What was your job? A. Pressman.

* * * * *

Q. What shift did you work? A. I worked first shift.

Q. What are the hours on the first shift? A. When I first started I was working from 7:00 to 5:00 four days, and then the fifth day I worked from 7:00 to 3:00.

Q. Seven a.m. to five p.m. Monday through Thursday and seven to three p.m. on Fridays? A. Yes.

26 Q. And normal payday is when - or, was when? A. Friday.

Q. Now, during the period of time you worked on a normal workday, when did you take your lunchbreak? A. When the molds were all in we got maybe two minutes off or so, and we ate then. That was the only time

we had to eat.

Q. Can you speak a little more loudly and enunciate a little better, Mr. LeGassa, so we can hear you?

TRIAL EXAMINER: Did you work from seven in the morning to five at night without a lunch hour?

THE WITNESS: Yes.

TRIAL EXAMINER: Go ahead.

Q. (By Mr. Selby) Can you tell us what period of time during the normal workday you had a rest break? A. Well, we had three molds to operate on. When we started on the first one we went all the way through to the third one, and then we got between two and three minutes off, and that was the only time we could have a smoke or eat a sandwich.

Q. Can you explain for us the procedure in operating these molds that you have? A. Well, you pull out these molds from these ovens, these presses —

TRIAL EXAMINER: Excuse me. What do they make there, tires?

THE WITNESS: No, these are little gaskets.

27 TRIAL EXAMINER: I see. All right.

THE WITNESS: You pull out these molds, open them up and you put raw rubber in them, then push them in, push the buttons in and run up the air pressure. We had to wait until the air pressure was up and then go to the next one until you get that one finished and then you go to the third one, and by the time you got through with the third one you had two or three minutes off, and that's the time you had to take a smoke or eat a sandwich, and then you went back to work.

Q. (By Mr. Selby) Did — these molds were being raised up into ovens for pressure cooking, is that right? A. Yes.

Q. Then when they would come down you would take the rubber gaskets off, clean the mold — A. Yes.

Q. — and then put the raw rubber back in and continue the same process again? A. Yes.

Q. Who was your foreman? A. William Tersinar.

Q. Do you know who he is? A. Yes, he's right over there.
(Pointing.)

TRIAL EXAMINER: Wait a minute. Is Mr. Tersinar in the court room?

MR. WILLIAM TERSINAR: Right here.

28 Q. (By Mr. Selby) If you see him, would you point him out?
A. Right there. (Pointing.)

TRIAL EXAMINER: It's admitted he's plant superintendent. Go ahead.

Q. (By Mr. Selby) Now, directing your attention to October 1967 through approximately January 8, 1967, were you still working on the first shift? Excuse me, I meant 1968. A. No, I was on the afternoon shift.

Q. Did a "Curly" Herbert Johnson, "Curley" is his nickname, —
A. Yes.

Q. — work on that shift? A. Yes.

Q. Did you have any conversations with him? A. Yes.

* * * * *

29 Q. (By Mr. Selby) What did you discuss, generally, during this conversation? A. Well, we discussed the union. I asked Herb how we could start it and he says to go see this Robert Bodoh over in Ramsey.

TRIAL EXAMINER: Is that a union representative? Can we get a statement from union's counsel concerning this man's accurate name?

MR. COLLINS: Bodoh.

MR. SOLTIS: B-o-d-o-h.

TRIAL EXAMINER: There's no problem about that, is there, gentlemen?

MR. WRIGHT: No.

Q. (By Mr. Selby) At the time, he was President of the Steelworkers Union at the Peterson Mine at Bessemer, is that right? A. Yes.

30 Q. Did you make contact with Bodoh? A. Yes, I did.

Q. And, as a result of your contact with him —

MR. WRIGHT: If the Court please, I can't see the materiality of this line of questioning to the issue in the case.

TRIAL EXAMINER: Well, I do, but it's all preliminary. This is not important. He made contact with Bodoh, something will come of it, I feel quite certain, from my experience; so, I consider this preliminary and your objection is overruled. Proceed.

Q. (By Mr. Selby) As a result of your discussion with Bodoh did you call Joe Soltis? A. Yes.

Q. And who is he? A. He's the representative of the Steelworkers.

Q. And, as a result of your conversation with Mr. Soltis, what, if anything, did you do? A. Well, I went up and got the cards from Mr. Soltis.

Q. Do you recall when this was? A. This was the 24th, on a Saturday.

Q. The 24th of what?

TRIAL EXAMINER: The 24th of what?

THE WITNESS: February.

Q. (By Mr. Selby) 1968? A. Yes.

31 Q. What, if anything, did you do with those cards? A. Well, I went around, me and Doug Twiggs -

Q. "T-w-i-g-g-s?" A. Yes, we went around and got the cards all signed. We approached the people with the cards, told them to read the cards and if they wanted to sign them they could sign them and if they didn't, it was up to their own judgment; if they wanted to do it they could or if they didn't want to do it they didn't have to.

* * * * *

32 Q. (By Mr. Selby) - I'll hand you this pack of cards and ask you if you can identify it?

TRIAL EXAMINER: You may state how many there are.

MR. SELBY: There are 17 cards here.

TRIAL EXAMINER: All right. What are those cards?

THE WITNESS: These are the cards that I picked up from Soltis, the Steelworkers' cards, the ones I had the employees sign.

Q. (By Mr. Selby) Look through those cards and tell me whether number one, the cards were blank when you handed them to the individuals who signed them - A. Yes, they were all blank.

Q. Nothing was filled out? A. Nothing.

Q. Did you observe the individuals who purported to sign those cards?
33 Did you see them actually sign the cards? A. Yes.

Q. Did you know the individuals who signed those cards? A. Yes.

Q. Did you see them date the cards when they were dated?
A. Yes.

Q. There are some cards that are undated? A. Yes.

Q. With respect to the cards that are undated, can you tell us when those cards may have been signed? A. They were all signed on the 24th.

Q. Have you looked through all the cards now? A. No, not all of them.

TRIAL EXAMINER: Let me get this straight, Mr. LeGassa; every card that you have just looked at and handed back to Mr. Selby, was each of those cards given by you blank —

THE WITNESS: Yes, they were.

TRIAL EXAMINER: — to an employee whom you knew and did that employee fill it out, sign it and hand it back to you personally?

THE WITNESS: Yes.

TRIAL EXAMINER: You're swearing to this here and now?

THE WITNESS: Yes.

* * * * *

35 TRIAL EXAMINER: The hearing will be in order.

Is there some progress to report, gentlemen? Mr. Selby has handed me a package of cards and I see that Mr. Wright has some in his hand. Now, I assume there is some differentiation. What is the status with respect to the cards you have handed me, that are in my hand, Mr. Wright? Are they conceded?

MR. WRIGHT: I assume they are the 17 cards Mr. LeGassa has testified to, is that correct?

MR. SELBY: Yes sir, those are the cards.

TRIAL EXAMINER: There were 17 cards that were offered, I think they're offered; but, at least Mr. LeGassa was questioned concerning them
36 just before the recess. Now, what is your pleasure with respect to these cards, Mr. Selby?

MR. SELBY: They have been offered, Your Honor.

TRIAL EXAMINER: You're offering them in evidence?

MR. SELBY: Yes sir.

TRIAL EXAMINER: All right. What is your position, Mr. Wright?

MR. WRIGHT: So far as those cards you have in your hand, and I understand there are 17 of them -

TRIAL EXAMINER: Yes sir.

MR. WRIGHT: - we have checked the signatures and are satisfied with the signatures. We do not concede they were all signed in the presence of Mr. LeGassa, for whatever that may be worth.

TRIAL EXAMINER: I think that last comment of yours is most to the point; what difference would that make?

MR. WRIGHT: I mean, we're not conceding that; but, we agree that they are the signatures of whom they purport to be. Now, we go through and find several of them are undated, so -

TRIAL EXAMINER: I also notice that on the "date" line, those that are undated, there's a rubber stamp that says "undated"; so, there isn't any doubt about that at all.

MR. WRIGHT: I mean, we can't say anything about as to when they were actually signed.

TRIAL EXAMINER: But the witness has testified. Have you completed
37 your statement of position with respect to these cards?

MR. WRIGHT: As to the cards and what they show, we don't object to them. Anything they don't show we don't admit.

TRIAL EXAMINER: Of course. These 17 cards will be received in evidence, and I hope I have not changed their order, the first one seems to be an "A", they seem to be in alphabetical order. Will they please be marked General Counsel's Exhibits 2(a) to I think it's (q). Have you marked them, Mr. Selby?

* * * * *

TRIAL EXAMINER: I see. Very well. OK, you can complete your marking, Mr. Reporter, later. They've been marked and they are in evidence.

(General Counsel's Exhibits 2(a) through (q) for identification were received in evidence.)

* * * * *

TRIAL EXAMINER: There's been no testimony concerning anything except the 17 cards we've just acted on. So, if you have anything with respect to some others, proceed.

38 MR. SELBY: Your Honor, in view of Respondent's agreement to check signatures with his payroll against those on the cards, we have tendered three other cards to Respondent for that purpose, and if they're agreeable, that the signatures are authentic —

MR. WRIGHT: Well, I don't know. Have these been checked?

MR. BURNS: Yes, they've been checked.

TRIAL EXAMINER: Even for that I can't control what you and Mr. Wright do. We've had testimony concerning 17 cards and we've completed action on them. Now, I don't know anything about these other three cards.

MR. SELBY: There are other cards which I have given to Respondent

to check against his payroll and possibly we can stipulate to the authenticity of the cards and put them in at this time.

TRIAL EXAMINER: But you've got no evidence, not even *prima facie* evidence, like Mr. LeGassa as to the 17. On this record we don't know a thing about those cards. I think you ought to, before you turn them over to counsel, requesting some kind of checking or stipulation, I think you ought to establish them in some way on this record. You may not get very far, but you ought to go as far as you can.

* * * * *

39 Q. (By Mr. Selby) Mr. LeGassa, I hand you three more cards and ask you whether you recognize those cards? A. They weren't signed in my presence.

Q. Do you recognize the cards? Were those cards given out to people whose signature you recognize by you? A. Yes.

TRIAL EXAMINER: Now, Mr. Selby, identification by a witness of a printed document simply by his reading it doesn't add anything to the store of knowledge in this record. Anybody can identify a card. Unless you have something specific, they speak for themselves. If they're nothing, they're nothing.

Mr. LeGassa, did you hand out cards to any other persons other than the 17 cards that have been received in evidence?

THE WITNESS: No. I dropped three of them off at the employee's houses.

TRIAL EXAMINER: You dropped three of them off at the homes of three employees?

THE WITNESS: Yes.

TRIAL EXAMINER: All right. Now, that was the question you should

have asked, Mr. Selby, to give some status to these cards.

Where did you drop cards? What homes? Do you remember their names?

40 THE WITNESS: Yes.

TRIAL EXAMINER: What are they?

THE WITNESS: Raymond Sibley, Donald Pikka and Pat Juopperi.

TRIAL EXAMINER: Were those cards returned to you personally?

THE WITNESS: No.

TRIAL EXAMINER: All right, that's the end of the line. Now, go ahead.

Q. (By Mr. Selby) Going back slightly out of chronological order at this time, if you will bear with me -

TRIAL EXAMINER: I will bear with you because I must.

Q. (By Mr. Selby) - Mr. LeGassa, during September, 1967, were you aware of a Ralph Olson being employed in the plant? A. Yes.

Q. The Quality Rubber plant? A. Yes.

Q. Did you overhear a conversation between Mr. Nels Luoma and Mr. William Tersinar in approximately September, 1967? A. Yes.

Q. Will you tell us what you heard?

TRIAL EXAMINER: You'd better lay the scene.

Q. (By Mr. Selby) Where was this conversation? A. Well, I
was working opposite of Nels Luoma and Nels asked Bill Tersinar what hap-
41 pened to his partner, Ralph Olson. He said he didn't want the organizers
around here.

Q. Who said this?

A. Bill Tersinar.

MR. WRIGHT: Said what?

THE WITNESS: He doesn't want the organizer around. He said Ralph Olson was an organizer.

Q. (By Mr. Selby) Did you overhear any other part of the conversation? A. No. I had to go back to work then.

TRIAL EXAMINER: What was the name of the employee to whom Tersinar said that?

THE WITNESS: Nels Luoma.

TRIAL EXAMINER: Nels what?

THE WITNESS: Luoma

TRIAL EXAMINER: Is he still employed by Quality Rubber?

MR. SELBY: No sir. He is available and he will testify.

TRIAL EXAMINER: All right.

Q. (By Mr. Selby) Directing your attention, Mr. LeGassa, to Monday morning, February 26, 1968, approximately what time did you come to work? A. About a quarter to seven.

Q. Tell us what happened. A. Well, as I come to work, it was about a quarter to seven, and I come through the lobby and into the main plant and there was Nels Luoma and Vernon Mattson sitting at the picnic table and Bill Tersinar told me, he says, "Don't punch in."

Q. Had he ever said that to you before? A. He never did. He said there was a union coming in there and he was going to have to shut the doors down. They have a union in Chicago, he said, and they get a turkey for Thanksgiving and Easter, and a bonus - we got \$10 last year for a bonus - and he was talking there for awhile. He said he was just going to have to

lay us off, and then he said he was going to fire us. Then the rest of the boys come in and he was talking about it and —

TRIAL EXAMINER: And what?

THE WITNESS: He was talking to the rest of the guys when they come in, told them not to punch in, and that. He said, "I'm going to have to lay all you guys off," and then he was mumbling again about something and he says, "You guys are all fired, get out." As we were going out there were some ladies that come out of the rest room, they asked where we were going and we said we got fired for organizing the union. As me and Twiggs was walking out he pushed us and says, "Get out."

Q. (By Mr. Selby) Who pushed you? A. William Tersinar.

Q. Who do you recall being present that morning before you left the plant, which employees? A. You mean the women?

43 Q. No, the employees around the picnic table who were presumably within earshot of Tersinar's statements. A. There was Monti, Mattson —

Q. Which Monti? A. Raymond. Nels Luoma, Doug Twiggs, Leonard Westeen and there was Monti's son, young Monti, I don't know what his first name is, Mike Vilencia.

* * * * *

Q. (By Mr. Selby) Did you file for unemployment compensation?
A. Yes, I did.

Q. Did you receive documents from the Michigan Employment Security Commission with respect to your application? A. Yes.

* * * * *

* * * * *

48

CROSS EXAMINATION

Q. (By Mr. Wright) Now, Mr. LeGassa, you say that you came to work at fifteen minutes of six on the 26th of February of this year? A. No, fifteen minutes of seven.

Q. Fifteen minutes to seven, thank you. Now, were you the first one there? A. No, I was not.

Q. How many came in ahead of you? A. Two ahead of me.

Q. How many came in after you? A. Well, must have been about seven, maybe.

Q. So there were seven altogether, is that correct? A. No, there was — well, there was Nels Luoma and Vernon Mattson ahead of me.

Q. I beg your pardon? A. There was Nels Luoma and Vernon Mattson ahead of me, they were there first.

Q. They had a meeting with whom? A. I don't know nothing about a meeting.

Q. You don't know anything about a meeting? A. No.

49 Q. How do you know they were at a meeting, then? A. I didn't say they were at a meeting.

Q. Oh, I thought you did.

MR. SELBY: Objection, now —

TRIAL EXAMINER: Now, now, I'll take care of keeping order. He didn't say anything about a meeting.

MR. WRIGHT: He didn't? I understood him to say they'd been at a meeting. I might have been mistaken.

TRIAL EXAMINER: Next question. There's no need to rule.

Q. (By Mr. Wright) Well, altogether, how many were there?

A. Well, there was 8.

Q. Eight altogether. Was there anybody else in the room? A. No.
Oh, there was one kid way in the back over there.

Q. I beg your pardon? A. There was one kid way in the back working, but I don't think he could hear anything we were saying.

Q. Weren't some of the women employees there? A. They were not in the room where we were, no.

Q. You're sure about that? A. I'm positive.

Q. Now, was Mr. Tersinar there when you got there? A. Yes, he was.

Q. And isn't it a fact that what Mr. Tersinar asked you is whether or not you were going to work? A. He did not ask me to go to work.

50 Q. Didn't he ask you whether or not you were going to work?

A. No, he didn't.

Q. Or as a group? A. He asked two guys, I believe.

Q. If they were going to work? A. I believe.

Q. Who did he ask if they were going to work? A. It was either Nels Luoma or Vernon Mattson.

Q. Did they say they were not going to work? A. They said if the rest weren't they weren't, and I don't know which one answered or which one he was asking.

Q. Wait a minute, the two who said they weren't going to work if the rest didn't, who were they? A. Nels Luoma and Vernon Mattson.

Q. Were they the two that Mr. Tersinar was talking to when you came in, or were they two that came in with you? A. They were there before I was.

Q. They were there before you were. But, you say that Mr. Tersinar didn't ask you if you were going to work? A. No, he didn't ask me if I was going to work.

Q. Didn't he tell all of you that you could either go to work or turn in your cards? A. No, he did not.

Q. Now, how many times have you gone over this testimony with Mr. Selby? A. I believe it was about three times.

51 Q. Three times; off a tape recorder? A. No.

Q. No tape recorder has been used? A. Well, with Mr. Collins.

Q. With Mr. Collins a tape recorder? A. Yes.

Q. So you've gone over it with him three times with a tape recorder?
A. No, not three times.

Q. I thought you said three times.

MR. SELBY: Objection.

THE WITNESS: Not with the tape recorder.

MR. SELBY: Improper characterization of the testimony.

TRIAL EXAMINER: It is a very hazy area, not quite enough to make a ruling in accordance with your objection. It's overruled. We've got our teeth into something, let's go ahead.

Q. (By Mr. Wright) Now, was it gone over by you and all of the rest of the men who were there at that time together? A. No, not all of us, no.

Q. Well, how many of you got together and went over it three or four times? A. Well, he took us singly, so I don't know how many there was. We all went singly.

52 Q. You didn't do it together? A. No, we didn't.

Q. At anytime? A. The only one was with Collins.

Q. I beg your pardon? A. With Collins.

Q. So you never discussed it with Mr. Selby? A. The case?

Q. Your testimony in the case. A. Sure.

Q. So then you did discuss it both with Mr. Collins and Mr. Selby?

A. Sure.

Q. Have you discussed it with the other seven men over there?

A. No.

Q. Not at any time? A. No.

Q. Where were these discussions carried on?

TRIAL EXAMINER: We have two sets of discussions, please be specific.

Q. (By Mr. Wright) The ones with Mr. Collins, were they by themselves?

A. Yes.

Q. Where were they carried on? A. Over in Bessemer.

53 Q. I beg your pardon? A. At the Hunter's Inn Motel.

Q. That's in Bessemer? A. Yes.

Q. With Mr. Selby? A. One was at a private home and one was at Jacobsen's Motel.

Q. Jacobsen's Motel is also in Bessemer? A. Yes. No, Wakefield.

Q. Wakefield. How long after the 26th of February did these take place? A. Oh, I don't know, I can't remember.

Q. How many were present at the session at Jacobsen's? A. I don't know. He took us singly there, too. I don't know how many was there.

MR. WRIGHT: That's all.

TRIAL EXAMINER: Any redirect?

MR. SELBY: No sir.

MR. COLLINS: No questions.

TRIAL EXAMINER: Just a moment, Mr. LeGassa.

Will you tell me about this room with the picnic table? How large a room is it? Is it as large as this room?

THE WITNESS: Oh, much larger.

TRIAL EXAMINER: I see. Do you come in there before you go to work?

54 THE WITNESS: Well, first there's a lobby. That's about, maybe, 10 or 15 feet long. And then you go into the other doors, that's where all the women work and that's where the women always sit every morning. But, they weren't there that morning.

TRIAL EXAMINER: Well, how large a room is that?

THE WITNESS: It's pretty large.

TRIAL EXAMINER: Is that where the women actually work?

THE WITNESS: Yes.

TRIAL EXAMINER: What do they do? Pack?

THE WITNESS: Well, they, yes, pack them, and inspect them.

TRIAL EXAMINER: I see. All right, and then do you go through that room to go to work?

THE WITNESS: Yes.

TRIAL EXAMINER: And when do you get to this room with the picnic table?

THE WITNESS: When did I get there?

TRIAL EXAMINER: Is that the next room you get to?

TRIAL EXAMINER: Is that the next room you get to?

THE WITNESS: Yes. No, that was — there was the lobby and then the room with the picnic table, and then there's another room where we work.

TRIAL EXAMINER: I see. What's this larger room with the picnic table used for?

55 THE WITNESS: Well, it's one big room and then they've got the picnic table there off to the side and that's where the women have their lunch hour and their breaks.

* * * * *

RAYMOND SIBLEY

was called as a witness by and on behalf of General Counsel and, after being sworn, was examined and testified as follows:

TRIAL EXAMINER: What is your full name, please?

THE WITNESS: Raymond Sibley.

TRIAL EXAMINER: Proceed, Mr. Selby.

DIRECT EXAMINATION

Q. (By Mr. Selby) What is your address, Mr. Sibley? A. 1303
Pierce Street, Wakefield, Michigan.

Q. Were you ever employed the Quality Rubber Manufacturing Company? A. Yes.

Q. In what period of time? A. January 17 to February 21, '68.

56 Q. And how old are you? A. 19.

Q. What was your job? A. Pressman.

Q. And who was your foreman? A. John Tersinar.

Q. Do you know who he is? A. The son of William Tersinar.

Q. What shift did you work on? A. Second shift.

Q. What hours would that be? A. Five to three in the morning.

Q. I hand you what's been marked General Counsel's Exhibit 5 for identification and ask you if you recognize it?

(The above-mentioned document was marked for identification as General Counsel's Exhibit 5.)

A. Yes, I do.

Q. What is it? A. Union card.

Q. When you received this card were any of the spaces filled out on it? A. No, they weren't.

Q. Who filled out the spaces? A. I did.

Q. Is that your signature on the card? A. Yes, it is.

57 Q. When did you sign this card? A. The 26th.

Q. From whom did you get it? A. Don Pikka.

Q. What did you do with the card? A. I read it over and signed it.

Q. Who did you give it to? A. I went to a meeting on the 26th and I handed the card to Glenn LeGassa and he handed it to Mr. Soltis.

MR. SELBY: I offer General Counsel's Exhibit 5 for identification as General Counsel's Exhibit 5.

MR. WRIGHT: No objection.

TRIAL EXAMINER: That is received.

(General Counsel's Exhibit 5 for identification was received in evidence.)

* * * * *

58 Q. (By Mr. Selby) Can you tell us in your normal work what contact you had with John Tersinar? A. He was my foreman. He told me what to do.

Q. What if you required time off for personal business or illness? Who would you request that time from? A. John Tersinar.

59 Q. Did it, in fact, ever occur that you had to ask for time off?
A. One time.

Q. Were you granted the time off? A. Yes, I was.

Q. From him? A. Yes.

Q. Who instructed you in how to operate your molds? You were a pressman, is that right? A. Yes.

Q. Who gave you instruction on that? A. John Tersinar.

Q. Did you observe him instructing any other employees? New employees, on how to operate molds or any other machines in the shop?
A. No, just me.

* * * * *

60 Q. (By Mr. Selby) Did you have any conversations with Mr. Pikka or other employees who worked for Quality Rubber during early February?

A. Yes, I did.

61 Q. Generally, what were these conversations — what was the subject or subjects that you discussed?

* * * * *

THE WITNESS: About getting a union, the ten hours we worked and having no break, and we'd like to have some help.

TRIAL EXAMINER: All right.

Q. (By Mr. Selby) You heard the testimony of Mr. LeGassa with respect to no lunch time being available to you and no breaks. Did that same —

MK. WRIGHT: Now, just a minute, I think this man should testify on his own.

Q. (By Mr. Selby) Does that same —

TRIAL EXAMINER: It's a good idea, Mr. Selby, if you can distill it down to a few questions. You'll save argument and it stands up better.

* * * * *

Q. (By Mr. Selby) With respect to your job, you say you worked as a pressman? A. Yes.

Q. Tell us when you had a lunch break? A. When you had a few minutes off. I ran two presses, sometimes three. You'd have two or three 62 minutes off on the press, you'd put one up and by the time you loaded the other one you'd have two or three minutes left and you could eat then.

Q. When would you have a rest break? A. The two or three minutes you had off, if you could get it off.

Q. What were you earning per hour at the time of your termination?
A. \$1.60

Q. Did you have any general discussions with reference to your lack of any break while at work?

TRIAL EXAMINER: Discussions with whom?

MR. SELBY: With other employees.

MR. WRIGHT: That's objected to.

TRIAL EXAMINER: Oh, come on, they discussed terms and conditions of work. That you have established. The details are not binding on Respondent.

MR. SELBY: Well, I just asked him when he was at work if he had a discussion. The prior discussion was at a service station.

TRIAL EXAMINER: Oh. Did you discuss these things at your place of employment?

THE WITNESS: Yes, uh huh.

* * * * *

63 Q. (By Mr. Selby) Now, as a result of one of those discussions on about February 12 with - well, was Herbert Johnson instructed to do anything? A. Yes. We were talking there and I said, "This place needs a union," and, "I can't take much more of this." "I don't mind working," I says. And we discussed it, we'd like to have ten minutes in the ten hours we worked for a lunch break. Herbert Johnson would be our spokesman.

Q. What was Herbert Johnson to do? A. Talk to John Tersinar about our ten-minute break.

Q. Did John Tersinar make any statement that you overheard with respect to taking breaks? And the molds? A. Yes, he said the molds

can't stop, we've got to keep them running, we can't shut them down.

Q. About when was this statement made? A. The 12th, the same night.

Q. Of what month? A. February. We went and took the break.

Q. You say "we." Who took a break and how long a break did you take? A. Matt Mattson, George Golembeski, Herbert Johnson, Don Pikka and myself.

Q. You took a break? A. Yes.

Q. How long a break did you take? A. Ten minutes.

64 Q. What time? A. At ten o'clock.

Q. For how long a period of time did you take the break? A. One week.

Q. Until the end of that week? A. Yes.

Q. The 12th through the 16th, is that right? A. Yes.

TRIAL EXAMINER: Was this after Herb Johnson — did Herb Johnson speak to John Tersinar?

THE WITNESS: Yes, he did.

TRIAL EXAMINER: That's when John Tersinar said the molds have to keep going?

THE WITNESS: Yes.

TRIAL EXAMINER: Did you take the break after that conversation?

THE WITNESS: Yes, we did.

* * * * *

65 TRIAL EXAMINER: Well, of course, you'll have your opportunity to

cross examine; but, since you've raised the question, did you hear John Tersinar say something to Herb Johnson?

THE WITNESS: Yes, I did.

TRIAL EXAMINER: What did he say?

THE WITNESS: "We can't let the molds stop, we've got to keep them running."

* * * * *

66 Q. (By Mr. Selby) Now, Mr. Sibley, did you notice any change in attitude, in conduct towards you or any other individuals who took their breaks during the week of February 12 through 16? A. Yes, I did.

Q. Can you describe it for us specifically? A. John Tersinar, the guys that took the breaks, he was snotty towards them, he didn't pay much attention to them. The people that didn't take the breaks, he'd help them out and talk to them.

TRIAL EXAMINER: Do you mind changing the word "snotty" to "brusky"? It'll all be on the record.

* * * * *

67 Q. (By Mr. Selby) Directing your attention to the next day, Friday, February 16, about 10:00 p.m., you were about to take your dinner break that you employees had decided to take? A. Yes.

Q. Did you have a conversation with John Tersinar? A. Yes, I did.

Q. What, if anything, did he say and what, if anything, did you say? A. He told me if I took another lunch break not to bother to come out Monday.

Q. Did you overhear this same statement made to any other employee?

68 A. Yes, I did.

To whom? A. Don Pikka. He told him the same thing.

Q. When did you normally conclude actual working on the presses, that is, the production of rubber parts? This would be on a typical workday.

A. About 2:30.

Q. What did you normally do after that? A. We cleaned up, washed up, and punched out.

Q. At what time? A. Three.

Q. How, if at all, did that procedure change on the evening of February 16? A. Don Pikka and I were by our molds and John Tersinar come around and told us to put another load in the molds, a ten-minute load.

TRIAL EXAMINER: What time was this?

THE WITNESS: Two thirty.

Q. (By Mr. Selby) How much longer did you actually work on the molds as a result of having to put another load in? A. Fifteen or twenty minutes longer.

Q. Did you and the other employees, in fact, suspend, stop taking the breaks the following week, the ten-minute breaks? A. Yes, we never took them.

69 Q. Directing your attention to the following Wednesday, February 21, 1968, did you observe William Tersinar in the plant? A. Yes, I did.

Q. Was it usual or unusual for him to be in the plant at that time of the evening? A. It was unusual for the time I was working there.

Q. Had you seen him there before during the evening? A. No. During the evening?

Q. Yes. A. Yes, during the evening.

Q. Early evening? A. Yes.

Q. What time? A. He was there about 6:00 or 6:30.

Q. Was he ever there as late as 7:30? A. Yes, that night.

Q. That night was the only night? A. Yes.

Q. Did John Tersinar come up to you at about 7:30? A. Yes, he did.

Q. On February 21?

MR. WRIGHT: If the Court please -

THE WITNESS: Yes, he did.

MR. WRIGHT: - I think Mr. Selby's doing too much leading.

* * * * *

70 TRIAL EXAMINER: I don't see where. He said did John Tersinar, a company man, come up to him at such-and-such a time. You have to fix a time and a place for a conversation. The objection is overruled.

* * * * *

TRIAL EXAMINER: Did John Tersinar talk to you?

THE WITNESS: Yes, he did.

Q. (By Mr. Selby) Where were you at the time? A. At my press.

Q. What, if anything, did he say to you? A. He told me to go to the office.

Q. Did you? A. Yes, I did.

Q. Who was in the office? A. Bill Tersinar.

Q. Anyone else? A. No, there wasn't.

Q. What, if anything, did he say to you and what, if anything, did you say to him? A. He asked me, "Do you like to work here?" And I said, "Yes, I do." He was saying something and I said, "Well, quit beating around the bush, are you going to lay me off, or what?" And he said, "Yes, that's the idea." I said, "What's the reason," and he said for giving his son trouble.

71 Q. Was he more specific? Did he say anything besides "you are giving my son trouble?" A. No, he didn't.

Q. Did you ask him for anything? A. Yes, I asked him for a lay-off slip and he said to come back tomorrow, that would be Thursday, for a layoff slip. Then I went to the bench to pick my pail up and I walked around and I told Don Pikka I was laid off and I was standing at the end of the bench and he said "Get out."

Q. Who said "get out?" A. William Tersinar. So, I went to the picnic table and got my coat and put it on and out of the blue he says —

Q. Who said? A. William Tersinar, he said, "I've dealt with the Labor Boards and the unions for 20 years," and he told me he was paying good wages at \$1.60 an hour and he gave a bonus during the holidays and hams and turkeys. I said, "That's not going to benefit me." He told me to get out, so I left.

Q. Directing your attention to the following day, Thursday, February 22, did you return to the plant? A. Yes, I did.

Q. At what time? A. About 4:30.

Q. What was the purpose of returning? A. To pick up my check and get my layoff slip.

72 Q. Who did you see at the plant? A. William Tersinar.

Q. Was anybody else there? A. Don Pikka and Herbert Johnson.

Q. Where were you at the time you saw these people? A. In the front part, by the picnic table, around there.

Q. What happened? A. Well, I went to pick my check up, like I said, and I asked for a layoff slip and he said, "What do you mean, I fired you."

Q. Now, was he more specific than that? Did he say anything else? A. No, he just told me, "I fired you."

Q. OK. A. And then John Tersinar, meanwhile, came over and he told Curly Johnson he had plenty of time on the molds, that he had five minutes. Herbert Johnson had three molds and only had about two or three minutes off and Herbert Johnson said, "Well, you're too young to handle men." He told us —

TRIAL EXAMINER: Wait a minute, who said "You're too young to handle men?"

THE WITNESS: Herbert Johnson.

TRIAL EXAMINER: Said to whom?

THE WITNESS: John Tersinar.

TRIAL EXAMINER: All right.

73 THE WITNESS: He says, "You're too young to handle men," and then he had a little more, and William Tersinar says, "Well, I've dealt with the unions and Labor Boards for 20 years and I can handle them." And then he left.

* * * * *

CROSS EXAMINATION

74 Q. (By Mr. Wright) Now, Mr. Sibley, you were working on this night of the 21st of February and you say Mr. John Tersinar was the man in

charge of the room? A. Yes, he was.

Q. And that night did you throw any gaskets around or any small pieces of metal? A. No, I didn't.

Q. Did Mr. Tersinar object to any such conduct on your part? A. No.

Q. Throwing things around? A. No.

Q. In the vicinity of the presses and out into the room?

TRIAL EXAMINER: Now, now, now, now, Mr. Wright, you're going on something that's not in evidence. I permit at least one improper question, but the witness said he did not throw anything around. Now, if you have other questions you may ask them, but please don't predicate them on an answer the witness has not given.

Q. (By Mr. Wright) So, you deny that you were guilty of any horseplay or improper conduct?

MR. SELBY: Objection.

TRIAL EXAMINER: Oh, it calls for a conclusion, but I think the witness understands. Did you engage in any horseplay?

THE WITNESS: No sir.

TRIAL EXAMINER: That day?

THE WITNESS: No.

75 TRIAL EXAMINER: All right. The answer is just about as good as the question.

Q. (By Mr. Wright) Did you do anything you would consider misconduct?

MR. SELBY: Objection.

TRIAL EXAMINER: That's irrelevant. That objection is sustained. Next question.

MR. WRIGHT: All right.

Q. (By Mr. Wright) Mr. Sibley, after you were discharged out at the rubber plant, did you go out to Connor's and get a job?

MR. SELBY: Objection.

TRIAL EXAMINER: He may state that one question. I'm not going to let him go very far. Did you get another job somewhere.

THE WITNESS: Yes, I did.

TRIAL EXAMINER: Was it at a place called Connor's?

THE WITNESS: Yes.

TRIAL EXAMINER: Anything else?

MR. WRIGHT: Yes.

Q. (By Mr. Wright) And how long did you stay there?

MR. SELBY: Objection.

TRIAL EXAMINER: Sustained. Next question.

Q. (By Mr. Wright) Did you have any other employment after you left Connor's?

76 MR. SELBY: Objection.

TRIAL EXAMINER: What's the difference? It's irrelevant. I let you ask one. If you want to prove what I think you want to prove you're going to have to do it in some other way, because I don't think you're asking relevant questions even for cross examination. The objection is sustained. Proceed.

MR. WRIGHT: That's all.

TRIAL EXAMINER: Any redirect?

MR. SELBY: No sir.

TRIAL EXAMINER: How many men worked on what - did you call it the afternoon shift?

THE WITNESS: Yes.

TRIAL EXAMINER: How many men worked on that shift?

THE WITNESS: About seven, around there.

TRIAL EXAMINER: Is that counting John Tersinar or not counting him?

THE WITNESS: No, I didn't count him.

TRIAL EXAMINER: Were the seven men all handling molds?

THE WITNESS: Yes, Well, let's see, there was more than that, there

was some in the other room.

TRIAL EXAMINER: All handling molds?

THE WITNESS: Seven handling molds, yes.

TRIAL EXAMINER: What were the others doing?

THE WITNESS: They were making rubber and cutting it.

77 TRIAL EXAMINER: I see. All right, anything else, gentlemen, of this witness?

MR. SELBY: One further question, Your Honor.

REDIRECT EXAMINATION

Q. (By Mr. Selby) Do you know approximately how many people were making and cutting rubber in the other room? A. Two.

* * * * *

79

DONALD PIKKA

was called as a witness by and on behalf of General Counsel and, after being sworn, was examined and testified as follows:

* * * * *

DIRECT EXAMINATION

Q. (By Mr. Selby) Where do you live, Mr. Pikka? A. 2210 Castille Road, Wakefield, Michigan.

Q. Have you ever been employed by the Quality Rubber Company?

A. Yes, I have.

80 Q. What period of time? A. January 2, 1968 to February 21, 1968.

Q. What was your job? A. Pressman.

Q. What were your hourly wages at the time you went to work?

A. \$ 1.60.

Q. And at the time of your termination? A. \$ 1.90

Q. What shift did you work on? A. Night.

Q. Those hours would be five p.m. to three a.m.? A. Yes.

Q. Who was your foreman? A. John Tersinar.

Q. In this regard, what was the nature of your daily contact with John Tersinar? A. Well, he gave the orders of what to do.

Q. And how to do it? A. How to do it.

Q. Did you ever have occasion to ask for time off? A. Yes, I did.

Q. Now, specifically, I direct your attention to the end of January 1968 - A. Yes.

81 Q. - who did you ask for time off? A. John Tersinar.

Q. Were you granted the time? A. Yes.

Q. By whom? A. John Tersinar.

Q. When were you able to take time off to eat lunch when you were working for Quality? A. Just between the presses, may be one or two minutes at the most.

Q. What about your break periods, when would you have those? A. That was it, one or two minutes between presses. Not even that sometimes.

Q. Directing your attention to the Friday before New Year's, 1968, were you in the Quality Rubber Manufacturing office? A. Yes, I was.

Q. What was the reason for being there? A. Looking for work.

MR. WRIGHT: What?

TRIAL EXAMINER: "Looking for work."

MR. WRIGHT: Oh.

Q. (By Mr. Selby) Who was in the office with you? A. William Tersinar.

Q. Anyone else? A. No.

82 Q. What, if anything, do you recall him saying to you and what, if anything, do you recall saying to him? A. He asked me if I belonged to any unions and he didn't want no union in the place.

Q. Do you recall anything further? A. No.

Q. Then you went to work the following Tuesday, January 2, 1968? A. Yes.

TRIAL EXAMINER: What day was that before New Year's?

THE WITNESS: December-

TRIAL EXAMINER: What day of the week was it?

THE WITNESS: Friday.

TRIAL EXAMINER: All right. It was the last Friday in December just before New Year's?

THE WITNESS: Yes.

TRIAL EXAMINER: OK. Go ahead.

Q. (By Mr. Selby) Did you have any general discussions in the plant about the lack of a lunch break? A. Yes.

Q. And who normally participated in those discussions? A. Sibley, Johnson, Golembeski, Mattson - Matt Mattson, that is.

TRIAL EXAMINER: Are these all people on the afternoon shift?

83 THE WITNESS: Yes. That's all I recall.

Q. (By Mr. Selby) Did you also have similar discussions at Boetto's Texaco service station in Wakefield, Michigan, during early February, 1968?

A. Yes.

Q. Directing your attention to Monday, February 12, 1968, while you were at the presses at work, do you recall a conversation involving Golembeski, Johnson, Sibley, Mattson and yourself concerning the lack of a lunch break?

A. Yes.

Q. What, if anything, was done as a result of that discussion? A. Johnson was supposed to be the spokesman and go up to John Tersinar and ask him.

Q. What was he supposed to ask him? A. If we could get a lunch break.

Q. How long a lunch break? A. Ten minutes.

Q. Were you later informed what the results of that discussion were?

A. Yes.

Q. Who told you? A. Herb Johnson.

Q. What did he tell you? A. Ten minutes, if you have the molds empty.

84 Q. Did you then take a break for the rest of that week? A. Yes
Q. Ten minutes? A. Yes.
Q. Did you observe any other employees taking that break? A. Yes.
Q. Who were they? A. Johnson, Sibley, Mattson. That's all I recall.
Q. Directing your attention to Friday, February 16, 1968, did you have a conversation with John Tersinar about ten p.m.? A. Yes, I did.

Q. What, if anything, did he say to you and what, if anything, did you say to him? A. He said if we took a lunch break any more when the molds were down not to come out Monday.

Q. Did you, in fact, take any further breaks? A. No.
Q. Directing your attention, Mr. Pikka, to Wednesday, February 21, at about 7:30 p.m., did you observe John Tersinar come up to Sibley in the plant? A. Yes.

Q. What next did you see? A. Sibley going to the office.
Q. Did you see Sibley shortly thereafter? A. Yes.
85 Q. Where? A. He came up along the line and told me he'd been laid off.

Q. What happened next? A. Johnson came over to me and we wondered why he was laid off and he walked over next to the aisle and John Tersinar told me, "You go, too."

Q. What, if anything, did you do next? A. I went to the picnic table there and put on my jacket and William Tersinar came in. He told me to punch out, which I did. Johnson was right behind me, just a few steps behind me, and he told him the same.

Q. What? A. Punch out.
Q. Did you hear Johnson say anything? A. Yes, he asked him why Sibley had been laid off.

Q. Who did he ask this of? A. William Tersinar. He said he didn't have to tell him.

Q. William Tersinar said that? A. Yes.
Q. Do you recall anything else? A. Yes, I told him that I was supposed

to get a raise in 30 days and I didn't get it.

TRIAL EXAMINER: Who did you say that to?

THE WITNESS: William Tersinar. He said I'd get whatever I had coming to me. Then he says, "If you get a union in the place you'll have to work a lot harder."

86 Q. (By Mr. Selby) Do you recall anything else? A. No.

Q. Now, when you say "he says," who said that? A. William Tersinar. That's all I recall.

Q. Did you then leave? A. Yes.

Q. Was anybody with you when you left? A. Herb Johnson.

Q. He was right behind you? A. That's right.

Q. Directing your attention to the next day, Thursday, February 22, 1968, about 4:30 p.m., were you at the plant? A. Yes.

Q. What was the reason for being there? A. To pick up my check.

Q. Was anybody there at the time you were? A. Yes, Sibley and Johnson.

Q. What do you recall happening? A. Well, we asked for a layoff slip.

Q. Who did you ask? A. William Tersinar.

Q. Was anybody there besides Tersinar, you, Sibley and Johnson?

A. Not right at that time, no.

87 Q. OK. Did you get your checks? A. Yes. We asked for a layoff slip and he says we quit.

Q. Who said that? A. William Tersinar. Then he said that I'd get a layoff slip next week if the company grants it.

Q. He said you would get a layoff slip the next week if the company granted it? OK. Do you recall anything else? A. Yes, I do. He says, "I have dealt with Labor Boards for 20 years."

Q. Do you recall anything else? A. No, I don't

Q. Is your memory exhausted at this point? A. It could be.

Q. Is it or isn't it?

TRIAL EXAMINER: Do you remember anything else about it?

THE WITNESS: No. It was a long time ago.

TRIAL EXAMINER: All right.

Q. (By Mr. Selby) Do you remember Bill Tersinar saying anything about getting all of something that you wanted? A. I can't recall.

Q. OK. Mr. Pikka, I hand you what's been marked for identification as General Counsel's Exhibit 6 and ask you if you recognize it? A. Yes.

(The above-mentioned document was marked for identification as General Counsel's Exhibit 6.)

88

Q. What is it? A. Union card.

Q. When did you receive this card? A. The 24th of February, 1968.

Q. Was there anything written on that card when you received it?

A. No.

Q. Did you fill in all the blanks on the card? A. Yes.

Q. Is that your signature on the card? A. Yes, it is.

Q. When did you sign it? A. The 24th.

Q. Of what? A. February, '68.

Q. Who did you give this card to? A. Mr. LeGassa.

MR. SELBY: I offer in evidence General Counsel's Exhibit 6 for identification as General Counsel's Exhibit 6.

TRIAL EXAMINER: Show it to counsel.

MR. SELBY: The card has been shown to counsel for Respondent.

TRIAL EXAMINER: Any objections?

MR. BURNS: No.

89

MR. WRIGHT: No objection.

TRIAL EXAMINER: It will be received.

(General Counsel's Exhibit 6 for identification was received in evidence)

* * * *

CROSS EXAMINATION

Q. (By Mr. Wright) Now, Mr. Pikka, you said you had some breaks, time breaks, when the mold was down; now, what could that be, what part of the process would it be when the mold was down? A. Well, it depends, if you get one minute, two minutes -

Q. No, I mean what step in the process that you were working on was it when the mold was down? A. When it come down from being baked.

Q. So, that was after the mold was baked? A. Yes.

Q. And then what were you supposed to do with the mold after the baking was over? A. Clean them out, fill them up and put them back.

Q. Clean and refill and then put them up again in the oven, is that it?

90 A. Yes.

Q. How long would it take you to clean and refill? A. Well, anywhere from four to eight minutes.

Q. How big are those molds? Can you estimate how many inches long and high or wide or however you can describe it?

TRIAL EXAMINER: Can you spread your hands and show us about how big?

THE WITNESS: Yes sir, I can.

TRIAL EXAMINER: Or is it bigger than that?

THE WITNESS: About this big (indicating). Two of them are like that and one was about 100 pounds.

TRIAL EXAMINER: Can we get a stipulation that the dimensions indicated by the witness are approximately two feet by two feet, gentlemen?

MR. WILLIAM TERSINAR: They're all 20 by 20.

TRIAL EXAMINER: Thank you. That's Mr. William Tersinar who has given us the information. It's undoubtedly accurate and we thank you for it. Next question, Mr. Wright?

Q. (By Mr. Wright) You say it would take you from four to eight minutes to clean them. Is that the whole operation, cleaning and re-loading them? A. The whole operation.

Q. And then how long did it take to bake? A. I had one mold 10 91 minutes, one 14 and one 12, and I had to help on another mold.

Q. I beg your pardon? A. I had to help my partner on the other side on another mold.

Q. While the mold was baking you had to help on another mold, is that it? A. Well, I had three molds and then I helped on the other ten-minute mold, because they were heavy.

Q. Is that what each one of the men in that department had to handle, three molds? A. No - three, yes, most of them.

Q. Were all the molds the same size? A. No.

Q. Was there any difference in the size of the various types of molds you used? A. Some.

Q. Some much smaller than others? A. Not much smaller, if any.

Q. But they all took 10, 12 or 14 minutes to bake and it took you from 4 to 8 minutes to make the change? A. On my line, yes.

Q. On your line, that's what I'm talking about, your line. A. (Witness nods head.)

Q. How much time did you have between putting a mold back up in 92 the oven and the time the next one came down that you had to handle?

A. Sometimes no time at all. It depends on how fast you work.

Q. Now, were you present on the 21st of February at the time that Mr. Sibley was discharged? A. Yes.

Q. Just prior to his discharge what was Sibley doing? A. Working.

Q. In what way? I mean, what particular - A. Working on the presses.

Q. Working on the presses. Was he doing anything else? A. No, not that I know of. I can't see behind my head.

Q. I beg your pardon? A. I can't see behind my back.

Q. Oh, was he working in back of you? A. In the next line in back.

Q. The next line; how many lines were there? A. Four rows altogether, four aisles.

Q. Four aisles of these molds, is that it? A. Yes, presses.

Q. Now, those presses, how high are they off the floor? A. I don't know, I never measured them.

Q. I mean approximately. I don't suppose you got out there with a ruler, but -

93 TRIAL EXAMINER: Well, do you want to stand up and indicate with your hands about high they were?

THE WITNESS: Like this (indicating), that's the table. The presses are about that high (indicating).

Q. (By Mr. Wright) The tables are about half of your height and the presses are about, oh, eight inches to a foot higher than your height; is that about correct? A. Around there.

TRIAL EXAMINER: When the mold comes down out of the oven does it come to rest on the table?

THE WITNESS: No, you've got to pull it out. It comes down to the width of the table and you've got to pull it out.

TRIAL EXAMINER: Oh, I see, it comes down to about the level of the table and then you pull it out?

THE WITNESS: Pull it out, put a hook behind it and pull it out and then you use pry bars to open it up.

TRIAL EXAMINER: I'll take official notice of the fact, gentlemen, that a table height ranges between 30 and 36 inches.

MR. WRIGHT: Yes.

TRIAL EXAMINER: Any objection to my taking that notice?

MR. WRIGHT: I believe that's correct.

Q. (By Mr. Wright) So, on the evening of the 21st of February you and Sibley were not working on the same line? A. No.

94 Q. So, just exactly what might have taken place where Sibley was working is something you didn't see and you wouldn't know exactly what happened back there? A. Well, I seen what happened, I happened to turn that way when he left into the office.

Q. I mean before he went into the office, did you notice anything he might have been doing prior to that time? A. No.

Q. Now, at the beginning of that shift who was in charge of the presses? A. John Tersinar.

Q. What was the first time that Bill Tersinar got there? A. After supper sometime. I couldn't recall the exact time.

Q. You don't remember? A. It was after six, anyway, because he left about five o'clock.

Q. Who left there? A. William Tersinar.

Q. He'd been there up until five? A. He's on the day shift.

Q. Yes; then he came back sometime after six, but you don't remember exactly when? A. No

Q. And this discharge of Sibley took place about when? A. Seven thirty, around there.

95 Q. Now, did you hear any discussion between John Tersinar and Sibley prior to the time of the discharge? A. Not that I recall.

Q. Not that you recall. So, I take it you don't know what went on between them?

TRIAL EXAMINER: Well, he's testified he didn't hear any discussion. I don't know what else there is, unless you have some evidence.

Q. (By Mr. Wright) Now, on that night, who was working on the press next to you? A. Herb Johnson.

Q. Would that be in the same line or on another line? A. The same aisle.

Q. To your right or your left? A. To my right.

Q. And who was working on your left? A. Nobody, I'm on the end.

Q. I see. Was there anybody working alongside Sibley, if you know?
A. Yes.

Q. Who was? A. Dave Swearingen.

Q. How long had he been working there? A. He started around the same time I did.

Q. Four aisles of these molds, is that it? A. Yes, presses.

Q. Now, those presses, how high are they off the floor? A. I don't know, I never measured them.

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Q. To your right or your left? A. To my right.

Q. And who was working on your left? A. Nobody, I'm on the end.

Q. I see. Was there anybody working alongside Sibley, if you know?

A. Yes.

Q. Who was? A. Dave Swearingen.

Q. How long had he been working there? A. He started around the same time I did.

Q. I see. Do you know whether or not he's still working there? A. I wouldn't know.

96 Q. Where were you when you say Mr. Bill Tersinar was talking to Sibley?

A. Working.

Q. I said "where," where on the floor, how close were you to him?
A. Quite a ways away. He was in the office and I was on the press.

Q. Oh, I see, the conversation between them was in the office and you were out on the floor? A. Yes.

Q. So you didn't hear anything of what was said in the office? A. No.

Q. Now, where was it - I think you said Mr. Bill Tersinar told Sibley he didn't have to tell him why he was laid off, when did that happen? A. He told Johnson that at the picnic table.

Q. He told Johnson he didn't have to tell him why he laid off Sibley, is that right? A. That's right.

Q. But not that he had told Sibley that he didn't have to tell him, that is, Sibley? A. (Witness nods head.)

97 Q. The statement you made was he had told that to Johnson? A. Yes.

Q. I see. At that time, according to your card, you didn't belong to the union?

MR. SELBY: Objection.

TRIAL EXAMINER: Well, of course, the dates speak for themselves and it's conclusionary, but it's a minor matter. Yes, this was the 21st of February and the card which is in evidence is signed on the 24th. To that extent it speaks for itself.

Had you joined the union before you signed this card?

THE WITNESS: No.

TRIAL EXAMINER: All right. Now you've got your answer by the very facts in the record. Go ahead. You don't have to ask him because it's self-evident.

MR. WRIGHT: That's all.

TRIAL EXAMINER: Any redirect?

MR. SELBY: No sir.

TRIAL EXAMINER: Thank you, Mr. Pikka, you may step down.

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PATRICIA JUOPPERI

98 was called as a witness by and on behalf of General Counsel and, after being sworn, was examined and testified as follows:

* * * * *

DIRECT EXAMINATION

Q. (By Mr. Selby) What's your address, Mrs. Juopperi? A. 601 Ahola Avenue, Wakefield, Michigan.

Q. Are you currently employed by the Quality Rubber Manufacturing Company? A. No, I'm not.

Q. When was the last day you were employed by them? A. March 19.

Q. March 19? A. (Witness nods head.)

Q. And then you were laid off, is that right? A. Right.

Q. So, you're waiting right now for somebody to call you back to work?

A. Right.

Q. What period of time were you employed at the plant prior to the day of your layoff? A. I started on the 31st of January of '68.

99 Q. I hand you what's been marked General Counsel's Exhibit for identification and ask you if you recognize it? A. Yes, I do.

(The above-mentioned document was marked for identification as General Counsel's Exhibit 7.)

Q. What is it? A. A Union card.

Q. When did you get that card? A. February 24.

Q. From whom? A. I wasn't at home.

Q. It was left at your house? A. Yes.

Q. Was the card filled out at all by anyone before you signed it?

A. No.

Q. Who filled in the spaces on that card? A. I did.

Q. Whose signature is on that card? A. Mine

Q. When did you sign it? A. February 24.

Q. Do you know who you gave it to? A. I gave it to my mother and my mother gave it to Mr. LeGassa.

100 MR. SELBY: I offer General Counsel's Exhibit 7 for identification in evidence as General Counsel's Exhibit 7 and I now show it to counsel for Respondent.

MR. WRIGHT: No objection.

TRIAL EXAMINER: It's received.

(General Counsel's Exhibit 7 for identification was received in evidence.)

MR. SELBY: No further questions.

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CROSS EXAMINATION

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102 TRIAL EXAMINER: Do you mind if I interpose a question? I'm confused about something. There has been talk about a picnic table. Is this picnic table in the same room where the women inspectors work, but on another side of it?

THE WITNESS: Yes, it is.

TRIAL EXAMINER: I thought so, but I wasn't certain. Now, you may ask your question, if you please.

Q. (By Mr. Wright) Where in the room were you? A. Well, I came to work at ten to seven. I punched my time card in and I went over to the belt where two other women were seated.

Q. The belt, you say? A. Yes, where they were.

Q. Now, what part of the room is the belt in? A. Well, when you come in the picnic table is at the right and they work on the left side of the room.

Q. That's coming in from the west entrance? A. Right.

103 Q. Now, is the time clock in that little office that's in the lobby, or

where is the time clock? A. The time clock is in the same room where we work.

Q. The same room where you work. When you got there were there any other employees in the room? A. Most of the men were there by that time and I don't know if the women that I ride in with in the car pool had come in with me or not.

Q. How many women rode with you in the car pool? A. There's five of us.

Q. They were all employees of Quality Rubber? A. Yes.

Q. Was Mr. William Tersinar there at the time? A. Yes, he was.

Q. Now, will you just tell us what you saw and heard that morning?

A. Mr. William Tersinar did ask all the men at the picnic table "do you want your jobs?" and they said "no."

Q. What else did Mr. Tersinar say to them, if anything? A. I went by the boxes that are to be shipped out and as the men were walking out Mr. Twiggs said to me, "Well, I'm not going to work but you can go."

Q. Now, Mr. Twiggs was an employee of Quality Rubber? A. Yes, he was.

104 Q. Now, did you meet anybody else walking out as you were there besides Mr. Twiggs? A. All the men were walking out at that time.

Q. Did any of the other men say anything to you? A. No.

Q. Did you notice whether or not Mr. Tersinar had in his hand at the time he asked them if they wanted to work their time cards? A. No, he didn't

Q. And what did he say with reference to what should be done by those who wanted to work? A. I didn't hear anything in that regard.

Q. You didn't. Now, how many men left at that time? A. I can't say. Quite a few of them.

Q. Quite a few? A. Most of them.

Q. And following their exit what did you do? A. I went on the job.

Q. And that was over on your inspection job? A. Yes.

Q. And what you've told us is all that you heard and saw at that time?
A. Yes.

MR. WRIGHT: No further questions.

TRIAL EXAMINER: Redirect?

105

REDIRECT EXAMINATION

Q. (By Mr. Selby) What time did you get to the plant that morning?
A. Ten to seven.

Q. Ten to seven? A. Right.

Q. And you say all the employees were in the plant at that point, all the male employees? A. Yes, they were.

Q. And they were sitting around a picnic table at that point? A. Yes.

Q. Was Bill Tersinar walking around the picnic table? A. He was standing by the picnic table.

Q. I see. Did you see him go up to any employees? A. No.

Q. Were you present when Bill Tersinar said "I don't want no union and if you put a union in here I'll shut the plant down?" A. I did not hear him say that.

Q. You didn't hear him say that? A. No. I may have been present then, I don't know.

Q. Did you hear him say "if they put a union in here they'll have to have an election and we'll put four presses to a man?" A. No, I did not.

Q. Did you hear anything said about a union? A. No.

106 Q. In point of time, when you arrived in the room where the picnic table was - A. Yes.

Q. - how soon after you arrived did the employees get up and walk out? A minute? A. No, I'd say about three minutes.

Q. Three minutes later. I see. You were called in to the plant yesterday, were you not? A. Yes.

Q. Is that the first time you'd seen the attorneys for the company?

A. Yes.

Q. Since you became aware of the fact this case was pending? A. Right.

Q. Did they tell you anything about getting your job back? A. No.

Q. What about Mr. Tersinar, he was there, wasn't he? A. Yes, he was.

Q. Did he say anything about getting your job back? A. Well, I guess I'll eventually be called back.

Q. What did he say? A. I mean, he didn't say anything in regard to that.

Q. Did he say anything about your job? A. I mean, he had told me before that I would get back eventually.

107 Q. What did he say yesterday? A. Nothing.

Q. What did he tell you yesterday about whether or not your job would be affected either way by telling him what had happened? A. I didn't talk to Mr. Tersinar yesterday.

Q. You didn't? Who'd you talk to? A. Mr. Wright, Mr. Burns and Mr. Busk, the company's President.

Q. William Tersinar was not in the office at the time? A. He was present, yes.

Q. There wasn't a union representative there, was there? A. Not that I know of.

Q. Were you called on the phone? A. Yes.

Q. Who called you? A. One of my bosses.

Q. Who? A. Ivan Arentz.

Q. The chemist? A. I guess so.

Q. Did he tell you why he was calling you? A. He just wanted me to come down because the lawyers wanted to ask me a few questions.

108 Q. Did he say you had to come down? A. No.

Q. What did he say? A. I mean, I don't understand.

TRIAL EXAMINER: Mr. Selby, I think you're going pretty far afield for very little, if any, purpose. I shan't say anymore than that. I think you are pretty far out for any proper redirect.

MR. SELBY: You put me in that position, Mr. Examiner, by allowing direct examination on cross examination. We're so far afield -

TRIAL EXAMINER: Take it easy, take it easy, Mr. Selby, don't get agitated. I gave a ruling that was against you. I'm telling you I think you have established the fact the witness has been interviewed by company counsel. When you've been at the bar as long as I have you'll know there's not only nothing unusual about it, but it's a part of our system. You interview witnesses, they interview witnesses. I'll form my judgment by how the witness's testimony stacks against other testimony and the probabilities, all of that is part of the business of judging and I'll do the job for which I'm being paid. But, I simply think that a certain amount of redirect is valid. If you think you are rehabilitating or undoing something about this witness, I think you're 109 wasting your time. I'm not going to be specific because I'm not going to try your case. I'm trying to keep this proceeding moving in an orderly fashion, that's all.

MR. SELBY: I was hoping you would do that, Your Honor, but you put me on the spot with your latitude on cross examination. Now, I -

TRIAL EXAMINER: Mr. Selby, I'm going to interrupt you. You're a young lawyer, at least I assume you're younger than I am, and you're going to have to learn certain things are not done during the trial of a case. You don't make a personal issue of a ruling and you don't make personal remarks to the presiding officer.

MR. SELBY: I didn't intend it to be that way.

TRIAL EXAMINER: You will please stick to the merits of your case and your argument. I expect you to do the very best for your client which is the United States Government. I'm going to keep this hearing, this trial, fair to all parties, including the Government and the Respondent.

Proceed.

MR. SELBY: I just want to make it clear that I'm making no personal attack and I intended no personal attack on you, and if you took any such remarks as that then I would withdraw those remarks at this point.

TRIAL EXAMINER: Proceed.

MR. SELBY: I think I am entitled and I think you will - I think I'm entitled to go into the circumstances surrounding the interrogation of Mrs.

110 Juopperi.

TRIAL EXAMINER: I think so, too, but there comes a time when I think you've exhausted the avenue and then it has to be put to something no matter how good it may seem at the beginning. I'm simply indicating to you that you're coming to the end.

Now, go ahead.

MR. SELBY: I'll withdraw any further questions. No further questions.

* * * * *

MARY VILENCIA

was called as a witness by and on behalf of General Counsel, and after being sworn, was examined and testified as follows:

TRIAL EXAMINER: Sit down. May I have your full name, please?

THE WITNESS: Mrs. Michael Vilencia, V-i-l-e-n-c-i-a.

TRIAL EXAMINER: Your first name is "Mary," is it?

THE WITNESS: Yes.

111 TRIAL EXAMINER: All right, proceed, Mr. Selby.

DIRECT EXAMINATION

Q. (By Mr. Selby) Where do you live, Mrs. Vilencia? A. In Ramsey, Michigan.

Q. Is your husband currently employed by Quality Rubber Manufacturing Company? A. Yes, he is.

Q. How long has he been employed there? A. I don't know.

TRIAL EXAMINER: Approximately? Is it a year or more?

THE WITNESS: A year.

TRIAL EXAMINER: All right.

Q. (By Mr. Selby) Directing your attention to Sunday, February 25, 1968, did you have a conversation or were you present during a conversation between your husband and Glenn LeGassa at your house? A. Yes, I was.

Q. Do you recall what the gist of that conversation was? A. Well, it basically boils down to the fact that he was there for the purpose of getting my husband to sign a card for the purpose of forming a union and that he felt it was necessary at the plant.

* * * * *

112 Q. (By Mr. Selby) On that same day do you recall some run-in with employees at Boetto's gas station in Wakefield, Michigan, where you were present with your husband? A. Yes, sir.

* * * * *

Q. (By Mr. Selby) Now, as a result of that did you make a phone call?
A. Yes, I did.

Q. To whom did you make the phone call? A. To Mr. Tersinar.
Q. Which Tersinar? A. Mr. William Tersinar.
Q. About what time of the day or night was this? A. I don't have any idea. It was in the evening.

Q. What, if anything, did you tell him and what, if anything, did he tell 113 you? A. I don't recall the exact conversation, I'm terribly sorry. If I was to reiterate I would probably be giving you the wrong conversation, so in all fairness to the court of justice I would say that I can't remember.

Q. Are you refusing to answer the question, Mrs. Vilencia? A. No sir, I'm not.

Q. Do you remember having a conversation with me? A. Yes sir.
Q. This past week? A. Yes.
Q. Do you remember telling me you would refuse to testify when I asked you questions? A. Is that what I told you?
Q. I'm asking you a question. A. I'm asking you one.

* * * * *

115 MR. SELBY: I request permission of the Trial Examiner to examine this witness under Rule 43(b).

TRIAL EXAMINER: She's obviously a hostile witness. Go ahead, see where you can go.

Q. (By Mr. Selby) Did you give me an affidavit on that date, when I came to your house, March 14, 1968? Did you give me a statement? A. You had a piece of paper which you wrote several things on.

Q. Did you read that piece of paper on which I wrote several things?
A. I couldn't read the writing.

Q. Did you sign that paper on which you couldn't read the writing?
A. Yes, I did.

Q. Did you put initials on that piece of paper on which you couldn't read the writing? A. No, I didn't put any initials.

MR. SELBY: May I have one or two minutes?

TRIAL EXAMINER: Oh, sure.

(A document was marked for identification as General Counsel's Exhibit Number 8.)

Q. (By Mr. Selby) I hand you what's been marked General Counsel's
116 Exhibit 8 for identification, a document consisting of four pages, handwritten,
and I ask you if you recognize that document? A. It may be the document
that you presented to me.

Q. I show you the last page of that document and ask you if that's your
signature on that page? A. Yes, it is.

Q. I will now show you the first page of that document and ask you if
your initials appear on the third line of the third paragraph? A. Yes, sir.

Q. "MV?" A. Yes.

Q. I show you page 2 of that document and direct your attention to
paragraph 5, the 5th line, and ask you if your initials appear again, "MV?"
A. Yes, that's where you asked me to put them.

Q. Did I ask you to put your initials where any corrections were made?
A. I don't remember what, but I know you asked me to put my initials in
several specific places.

Q. I direct your attention to page 4 of that statement, paragraph 8, and
I ask you if your initials appear there? A. Yes, they do.

117 Q. Now, tell me whether or not this is true, I'm reading from this state-
ment, paragraph 7: "I believe I called Bill Tersinar the day before, on Feb-
ruary 25, Sunday, after we had a run-in with some employees at Boetto's gas
station." Is that true? A. Yes, it could be.

Q. It could be? A. Yes.

Q. Didn't you just testify before, as a matter of fact, that happened?
A. Yes, I did.

Q. Oh so, it not only could be but it is -

TRIAL EXAMINER: All right, now, Mr. Selby, you've made your point.
Don't overdo it. Go ahead.

Q. (By Mr. Selby) Continuing in the same paragraph, "I told him that if it was any consolation to Bill, my husband didn't have anything to do with the group of employees who were involved in union activities at the plant." Is that true or not? A. That's true.

Q. "Bill said he heard rumors about the union at Quality in Wakefield, but he didn't believe them." Is that true? A. I can't say whether that's true or not, because I don't remember that far back. I'm very sorry.

Q. "I told him -" I'm continuing - "I told him I didn't want my husband involved." Is that true? A. Yes, I didn't want my husband involved, that's correct.

118 Q. "Bill said he was there to employ men; if they wanted to work they could." A. Right.

Q. "He said he hoped this didn't close the plant due to the high overhead, but that I wouldn't understand it because it was too involved." Is that true? A. I don't remember that. I honestly don't remember that.

TRIAL EXAMINER: Proceed, Mr. Selby.

MR. SELBY: I'm trying to, Your Honor.

Q. (By Mr. Selby) When you gave me this statement, I'm referring to General Counsel's Exhibit 8 for identification, was it true at the time you gave it to me? A. Will you please reinstate the question? I don't understand what you mean.

TRIAL EXAMINER: Well, wait a minute, let me put a question here. Was that statement under oath?

MR. SELBY: Yes, sir.

TRIAL EXAMINER: Do you remember swearing to the truth of it when you signed it?

THE WITNESS: I remember swearing to the statement.

TRIAL EXAMINER: All right.

Q. (By Mr. Selby) I'm quoting again from the statement on page 4: "He said they should have waited a couple of years before they organized and had they waited the wages might have gone up to possibly \$2.65 per

119 hour this summer." Is that true? Did he say that? A. I don't remember, sir, I really don't.

TRIAL EXAMINER: All right.

Q. (By Mr. Selby) You related the information you recd' at least now to your husband that evening, is that right? A. Yes.

Q. Reading from page 2, paragraph 6: "The next day, Monday, February 26, I went to pick up the car at the plant before noon." Do you recall that? A. No, I didn't pick up the car before noon the next day.

Q. What did you do? A. I stayed home.

Q. You didn't go to the plant at all? A. No.

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120 Q. (By Mr. Selby) I'm continuing from the statement: "I went into the plant to get insurance forms." A. Yes, sir.

Q. Did that happen? A. Not then. It happened quite awhile before that.

Q. When did it happen? A. I don't really know. I know I went to the plant to get insurance forms, insurance papers.

Q. OK, OK. "Bill Tersinar was there." A. When I went to get the insurance papers, yes.

Q. "He said, 'I am very disappointed.'" A. Mr. Selby, there has been some —

Q. I'm asking you, do you remember or recall hearing that? A. I don't remember.

* * * * *

Q. (By Mr. Selby) "I understand Mike has been mixing with these fellows who have been talking union."

TRIAL EXAMINER: Do you remember saying that?

THE WITNESS: No sir, I don't.

TRIAL EXAMINER: Next question.

Q. (By Mr. Selby) Do you remember Bill Tersinar saying that? A. No, sir, I don't.

121 Q. "I just hope it's not true, I might have to let him go if he is the instigator." A. I don't remember that statement.

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Q. (By Mr. Selby) Did he say, "If you give me a moment I'll explain why we're in no position to go into anything like that now?" A. I don't remember that.

Q. Did he say, "They just started the plant and they had expensive machinery to pay for and he wished they had gone through proper channels 122 and seen him first?" A. I don't remember that, sir.

Q. Did he say, "But they were sneaking around and all these activities were going on during working hours and it was not a union shop, so, quote, I couldn't blame him for that, period, end quote?"

TRIAL EXAMINER: Do you remember that?

THE WITNESS: No, sir, I do not.

TRIAL EXAMINER: All right, go ahead.

Q. (By Mr. Selby) Did you say in your statement, quote, "I said I talked to Mike but I thought he had the wrong person, we had too much to lose, period, end quote?" A. No, sir.

TRIAL EXAMINER: Do you remember or are you saying you -

THE WITNESS: No, sir, I do not.

TRIAL EXAMINER: You do not remember. All right. Proceed, Mr. Selby.

MR. SELBY: I'll offer General Counsel's Exhibit 8 for identification into evidence.

TRIAL EXAMINER: Counsel, what's your position?

MR. WRIGHT: My position is I'm going to object to it. It's not competent evidence and I don't think it's been sufficiently substantiated. Also I'd like to ask this witness a few questions.

TRIAL EXAMINER: Nobody's going to stop you from asking a few 123 questions. Do you mean you want to ask them on voir dire? About the Exhibit?

MR. WRIGHT: Yes.

TRIAL EXAMINER: Questions about the Exhibit? All right, that's voir dire, go ahead. You may ask those questions now if they're proper voir dire. Are you familiar with the expression? Do you know what I'm talking about?

MR. WRIGHT: I've been practicing law for 40 years.

TRIAL EXAMINER: I was sure you did, but I couldn't understand your procedure. Do you mean you're going to ask questions on cross examination?

MR. WRIGHT: When Mr. Selby has produced this I was going to ask her some questions on cross examination, a few of them.

TRIAL EXAMINER: You may ask all the questions you want to on cross examination.

MR. WRIGHT: Through the affidavit.

TRIAL EXAMINER: That's perfectly all right, but we're now engaged in the determination of whether that affidavit should be received in evidence or not. Do you have any objection?

MR. WRIGHT: I object to it. There's not a sufficient foundation laid and in view of Mrs. Vilencia's testimony I don't think there's any basis for it coming into the case at this time.

TRIAL EXAMINER: I have seen only a few good cases of what is called 124 past recollection recorded. This is one of the very good ones. The witness has testified that the document is true. Some she remembers, some she doesn't remember. This document is received as the evidence of a witness under the rule concerning past recollection recorded. It is received in evidence.

(General Counsel's Exhibit 8 for identification was received in evidence.)

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CROSS EXAMINATION

Q. (By Mr. Wright) Mrs. Vilencia, you say you did not read the statement? A. I couldn't read it. I explained to him that I couldn't understand his writing.

Q. Then why did you sign it if you couldn't read it? A. If I may take the liberty to answer this?

TRIAL EXAMINER: You may answer. I would want you to answer.

THE WITNESS: On the particular day that Mr. Selby came into my home, I am not very familiar with legal procedure, either, but when he came into my home he didn't inform me that at one time or another this evidence 125 could be used or that I could be called and I had a youngster at home who was terribly ill that day and I resented the intrusion. I resented the intrusion on my privacy. I didn't see why — I thought this whole thing was irrelevant to the case. I'm not employed by Quality Rubber Company. My husband is. I think I have every right as an American citizen to make a dozen telephone calls if I so feel that I want to. I don't feel that this has any basis on this case. I don't believe that I should have been subpoenaed. I was subpoenaed through the mail and my subpoena was received under a name that wasn't mine. I am not "Miss Mary Vilencia," I am Mrs. Michael Vilencia. I would have appreciated having the "Mrs." on the envelope when I was served the subpoena. My youngster was very ill that day. You knew he was ill and yet you took the liberty of sitting there and questioning me, which I resented. I resented it as an invasion of my privacy and I considered it an extortion. I resented your being there, I resent you implicating me in this and I also resent the fact that you gave me no alternative. You didn't tell me that I had to answer these questions. You didn't tell me that I didn't have to. And being a lawyer I would say this was an infringement on your ethics as far as a lawyer is concerned and I feel sorry for you, because I have a son who's going to Stanford to be a lawyer and if he turns out like this I'm going to be very ashamed of him.

TRIAL EXAMINER: Next question.

126 Q. (By Mr. Wright) Mrs. Vilencia, did Mr. Selby read the statement to you before he asked you to sign it? A. No, he didn't, because I may have been at fault there, I probably should have had him read it. If I remember, he probably did ask me whether I wanted him to read it or not, but I'd been so upset that day, and prior to his being there there had been so many statements made about my husband's position in this case over bars, over pool

tables and everything else, that our whole life has been one great big mess and I'd like to know who's going to pick up the pieces to give me back my peace of mind. I couldn't even go downtown to have my taxes assessed without having someone refer to my husband as a Quality Rubber scab. I resent it and I'm not going to take it.

TRIAL EXAMINER: Next question.

MR. WRIGHT: No further questions.

TRIAL EXAMINER: An redirect?

MR. SELBY: No, sir.

TRIAL EXAMINER: Thank you, Mrs. Vilencia, you may step down.

THE WITNESS: Thank you, sir.

MR. SELBY: Do you have your subpoena?

THE WITNESS: Yes, I do.

MR. SELBY: Will you give it to me so you can get paid?

THE WITNESS: What'd you say?

127 MR. SELBY: Do you want to give me your subpoena so you can get paid?

THE WITNESS: Yes, I certainly will.

TRIAL EXAMINER: Mrs. Vilencia, the Government, like everyone else, is required to pay you a fee for appearing in Court. It's a matter of legislation passed by Congress.

THE WITNESS: I appreciate it, Your Honor, thank you.

(Witness excused.)

TRIAL EXAMINER: Ten minute recess, gentlemen.

(A short recess was taken.)

TRIAL EXAMINER: The hearing will be in order.

Do you have another witness, Mr. Selby?

MR. SELBY: Yes, Your Honor, Vernon Mattson.

Whereupon,

VERNON MATTSON

was called as a witness by and on behalf of General Counsel and, after being sworn, was examined and testified as follows:

TRIAL EXAMINER: Sit down. What's your name, please?

THE WITNESS: Vernon Mattson.

TRIAL EXAMINER: Proceed.

DIRECT EXAMINATION

Q. (By Mr. Selby) Spell your name. A. V-e-r-n-o-n, M-a-t-t-s-o-n.

Q. Where do you live? A. Box 214, Wakefield.

128 Q. Were you employed at anytime by the Quality Rubber Manufacturing Company? A. Yes, I was.

Q. What period of time? A. From June 19, 1967 to February 26, 1968.

Q. What was your job? A. Pressman.

Q. What were you earning per hour at the time you were hired?

A. \$1.50 an hour.

Q. And at the time of your termination? A. \$2.05 an hour.

Q. Who'd you take your orders from? A. Bill Tersinar.

Q. And you worked the day shift, from seven to five p.m.? A. Yes, four days a week, and then from seven to three on Friday.

Q. When did you take your lunch? A. Between press loads, when the press would come down we'd get a couple of minutes and we'd eat then.

Q. What about rest periods? A. There was none, just the periods between the press loads.

Q. Do you know employee Ralph Olson? A. Yes, I know him.

129 Q. Directing your attention to approximately October, 1967, were you present during a conversation or did you overhear a conversation between Nels Luoma and William Tersinar? A. I wasn't present, but I overheard it.

Q. You overheard it? A. I overheard it.

Q. What did you hear? A. I heard Nels Luoma ask Bill Tersinar why he laid his partner off and Bill Tersinar said he was an organizer.

Q. He was what? A. An organizer.

Q. Did he say what kind of an organizer? A. A union organizer.

Q. Do you recall anything else being said that you overheard? A. Not at that time.

TRIAL EXAMINER: Who did Tersinar tell this to?

THE WITNESS: Nels Luoma.

TRIAL EXAMINER: Was he working on the same shift as you?

THE WITNESS: Yes.

TRIAL EXAMINER: Go ahead.

Q. (By Mr. Selby) Mr. Mattson, directing your attention to Monday morning, 6:30 a.m., February 26, 1968, do you recall coming to work that day? A. Yes.

130 Q. Were you with anybody? A. No, I travel alone, but I met Luoma in the parking lot.

Q. All right. What happened? A. We went into the plant together and Bill Tersinar met us at the door. He asked me and Nels Luoma, "Would you help me?" He said he had sort of a threatening phone call from Mike Vilencia's wife that they were organizing the union in the plant, and Luoma says, "What?" Bill Tersinar says, "Is this true?" Nels says, "Yes." Then we walked from there into the main part of the plant. As we were going from the door toward the time clock he yells, "Don't punch in."

Q. Had that ever happened before? A. No.

Q. I'm sorry to have interrupted you. What happened after he told you not to punch in?

TRIAL EXAMINER: Go ahead.

THE WITNESS: We sat down on the picnic table then. Then he comes over there and —

Q. (By Mr. Selby) Who's "he?" A. Bill Tersinar comes over there —

Q. And you were sitting there with Nels Luoma? A. At the picnic table.

Q. With Nels Luoma? A. With Nels Luoma.

Q. Anyone else, any other employees? A. No, sir, there was no other employees there at that time.

131 Q. All right. Do you recall about what time it was that you came in the front door? A. About 6:30.

Q. And about what time was it that you would have been at the picnic table? A. Oh, maybe a couple of minutes after that. Well, we were sitting there at the picnic table and he comes over and he says —

Q. Bill Tersinar? A. Bill Tersinar says the only thing they got in the Chicago plant we haven't got here is they get ten minutes off in the morning and ten minutes off after dinner, which we don't get.

Q. Did he say anything before that?

TRIAL EXAMINER: How did the question of the Chicago union come up? What was said?

THE WITNESS: The Chicago union come up?

TRIAL EXAMINER: How did Tersinar get into that, talking about the Chicago union?

THE WITNESS: He came into the plant and he said he'd have to close the plant down if they get a union here.

TRIAL EXAMINER: Go ahead, tell us what else Mr. Tersinar said and the employees said, if they said anything.

THE WITNESS: And we were sitting there at the table and he'd walk away and then he'd come back and then he'd say, "They give hams, they 132 used to give hams and turkeys at Thanksgiving and Easter and a bonus at Christmas." We did get a \$10 bonus at Christmas.

TRIAL EXAMINER: Anything else?

THE WITNESS: Oh, then he stated that — other employees were coming in then and Glenn LeGassa came in and then he stated that if they get a union in there they'd give us four presses per man instead of the three that we had and then we'd have no break time.

TRIAL EXAMINER: Who said that?

THE WITNESS: Bill Tersinar.

TRIAL EXAMINER: Go ahead. Anything else?

THE WITNESS: I can't recall right now.

TRIAL EXAMINER: Next question, Mr. Selby?

Q. (By Mr. Selby) You can't recall anything else that happened at this point during the conversation? A. No.

Q. When Tersinar mentioned they'd put four presses to a man, did he say what would happen as a result of having that? A. That we wouldn't get no break time.

Q. Did Bill Tersinar say anything about an election? A. He said to get a union in there we'd have to hold the election.

Q. Now, can you tell us, during this period of time that these statements 133 were being made by Bill Tersinar, what was he doing? A. He was walking around.

Q. Around what? A. Around the picnic table. Then He'd walk out towards the door again and come back.

Q. As the other employees came in did he say anything to them? A. Well, he told them not to punch in.

Q. What else did he tell you and the other employees? A. Well, just before we went out he came up to me and asked me if I —

Q. Wait, wait, who came up to you? A. Bill Tersinar came up to me and asked me if I wanted to work and I said, "Not if the rest of them don't."

Q. Did he say anything before he asked you if you wanted to go to work? Did he tell you what would happen to you employees? A. That we'd be laid off.

Q. Well, what did he say? Tell me, as you recall it, what did he say about that? A. That if we get a union in here that he'd have to lay us off.

Q. All right. Then what do you recall him saying or anybody else saying? A. Well, after he asked me if I wanted to work I said, "Not if the rest 134 don't." Apparently he asked one of the other guys and his answer was the same as mine. Then I remember he said, "You are all laid off; no, you are fired."

Q. Who said this? A. Bill Tersinar said it. He said, "You are all fired; no," he said, "you are all fired."

Q. Do you recall anything else happening during this conversation? Do you recall anything else? A. No.

Q. All right. What did you do next? A. I got up off the picnic table and walked through another doorway there into the locker room and got my clothes.

Q. Did you see what the other employees did? A. No. I was on the corner closest to the door and I was the first one to go.

Q. Now, approximately what time, if you can recall, did you leave the plant or did you get up from the picnic table for the purpose of leaving the plant? A. Well, I'd say that would be about ten to seven that I left the plant, because I was home at seven o'clock.

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135 TRIAL EXAMINER: Go ahead.

CROSS EXAMINATION

Q. (By Mr. Wright) Now, Mr. Mattson, how many times have you gone over this statement with Mr. Selby? A. Twice.

Q. How many times have you gone over it with somebody else?
A. Once with Mr. Collins.

Q. Once with Mr. Collins and twice with Mr. Selby? A. Yes, but Mr. Collins was before Mr. Selby.

Q. How long ago was it you went over it with Mr. Collins? A. I don't recall.

Q. When are the two times you went over it with Mr. Selby? A. Last week and then Monday, this week Monday.

Q. You mean the 24th of June, Monday this week? A. Yes.

Q. And once last week, is that right? A. Yes.

Q. And where was it that you went over this statement with Mr. Selby these last two times? A. Once at Jacobsen's and once at — no, both times were at Jacobsen's.

Q. That's a motel in Wakefield? A. Uh huh.

Q. And all of these times you went over it it was just the same story
136 you've told today, is that right? A. Yes.

TRIAL EXAMINER: Any other questions?

MR. WRIGHT: Just a second.

No further questions.

TRIAL EXAMINER: Thank you, sir, you may step down.

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NELS LUOMA

was called as a witness by and on behalf of General Counsel and, after being sworn, was examined and testified as follows:

TRIAL EXAMINER: Sit down. What is your name, please?

THE WITNESS: Nels Luoma.

TRIAL EXAMINER: Spell your last name.

THE WITNESS: L-u-o-m-a.

DIRECT EXAMINATION

Q. (By Mr. Selby) Your first name is N-e-l-s? A. N-e-l-s.

Q. Where do you live, Mr. Luoma? A. Route 1, Box 21, Wakefield, Michigan.

Q. Did you ever work for Quality Rubber Manufacturing Company?

137 A. Yes.

Q. What period of time were you employed there? A. I started to work there July 10, 1967 and worked there until the morning of February 26, 1968.

Q. What was your job? A. Pressman.

Q. What were you earning at the time of your termination? A. I was making gaskets.

Q. What were you earning? A. Oh, \$ 1.90.

* * * * *

138 Q. What shift did you work? A. I worked the day shift from seven to five without no dinner break.

Q. Did you have any rest breaks? A. No, sir.

Q. Did you know Ralph Olson? A. Yes, sir.

Q. Who was he? A. He worked with me. That was in the beginning of October.

Q. What year? A. 1967, and one evening at quitting time he was laid off.

Q. About what month was this? A. The beginning of October. The next day I asked Mr. William Tersinar, I says, "How come you laid my partner off?" He said, "Because he's a union organizer." I said, "He wasn't, he was just out to make a living like the rest of us."

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Q. Was that about the end of the conversation? A. Yes.

Q. Did the conversation take place in the plant? A. In the plant.

Q. At your press? A. At my press.

Q. Mr. Luoma, directing your attention to Monday morning, February 26, 1968, what time did you come to work, if at all, on that day? A. About 6:35. Vern Mattson and I walked in through the door together. Mr. William Tersinar met us at the door. He says, "I want you guys to help me. I got a telephone call," he says, "from Mrs. Mike Vilencia saying that all the guys had signed to join the union and they wanted her husband to join and he wouldn't. Do you know anything about this?" I says, "I don't know anything about a telephone call." So, then we walked through the hallway, in through the other door into the plant and he told Vern and I, he says, "Don't punch in." So, we sat down at the picnic table there. He was walking there in front of us and he says, "I don't want no union in this plant. If a union comes in I'm going to shut this place down." Then he says, "If a union comes in they got to have an election and if the union comes in," he says, "I'll put four presses to a guy so he won't have one minute to himself, he'll be going steady all day." Then he says, "If the union comes in," he says, "I'll shut her down

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for a year or two and try again." Then he said, "If a union comes in I don't have to ship the presses back to Chicago, all I got to do is ship the molds back." He said, "We have a union in the Chicago plant which they wish they hadn't and there they have a ten-minute break before dinner and a ten-minute break after dinner." Then he says, "I had in mind to give the guys hams for Easter," and then he said something about killing the goose that laid the golden egg. Then as the buys kept coming in he told them not to punch in; so, when we were all sitting there he asked Mr. Mattson, "You want to go to work, Mr. Mattson?" Mattson says, "Not if the others don't." Then Mr. Mike

Vilencia said he would go to work. Then Bill Tersinar says, first he says, "I'm laying you guys off." Then he says, "No, you're all fired." With that he walked over to the time card rack and started taking time cards out and we went to the locker room, took our clothes and went home.

Q. Now, who do you recall being present during the conversation? In other words, what employees came in after you and Mattson had come in and sat down at the table? A. There was Mike Vilencia, Ray Monti, Westeen, myself, Mattson, Twiggs, LeGassa and George Monti and Mr. Tersinar.

Q. Were these people present during the entire conversation you had with Bill Tersinar? A. No, sir, they weren't.

141 Q. Where was Bill Tersinar with respect to the employees, where was he sitting or standing in the room? A. He was standing up in front of the picnic table there.

Q. Did he stand in one place? A. No, he was walking back and forth.

Q. What about the employees? A. We were sitting down.

Q. All at the picnic table? A. Yes, sir.

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CROSS EXAMINATION

Q. (By Mr. Wright) Ralph Olson was shortly re-hired, was he not?

A. He was hired three or four weeks after.

Q. As a matter of fact, it was about two weeks after, wasn't it?

A. Well, I don't know, for sure.

Q. And he stayed there for quite awhile following that? A. He stayed there until the Christmas holidays.

Q. Yeah, then he went back to the forestry service, is that it? A. I don't know.

142 Q. Now, how many times have you gone over your testimony with Mr. Selby and Mr. Collins? A. Twice.

Q. Just twice? A. That's all, and once with Mr. Collins. I gave Mr. Collins my testimony.

Q. And when was that? A. It was at the beginning of March.

Q. And the second time you gave it to Mr. Selby? A. Yes, sir.

Q. When was that? A. I believe that was March 14th, 1968.

Q. You didn't give it to him this past Monday at the same time the gentleman who preceded you did? A. I didn't get the question.

Q. I say, you didn't go over it with Mr. Selby last Monday at the time the gentleman who preceded you said he did? A. Yeah, we went over the testimony, yes.

Q. So that's three times? A. Not with Mr. Selby.

Q. Twice with Mr. Selby and once with Mr. Collins? A. I give Mr. Collins the testimony in the beginning of March, yes.

Q. And each one of these times that you went over it, it was the same
143 as you gave it today, is that right? A. The same, yeah.

MR. WRIGHT: No further questions.

TRIAL EXAMINER: Redirect?

MR. SELBY: No further examination.

TRIAL EXAMINER: Thank you, sir, you may step down.

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CLARENCE JOHNSON

was called as a witness by and on behalf of General Counsel and, after being sworn, was examined and testified as follows:

TRIAL EXAMINER: Sit down. Your name is what?

THE WITNESS: Clarence Johnson.

TRIAL EXAMINER: OK.

DIRECT EXAMINATION

Q. (By Mr. Selby) Are you currently employed by the Quality Rubber Manufacturing Company? A. I am.

Q. How long have you worked there? A. I started October 9 of last year.

Q. 1967? A. Right.

Q. Directing your attention to Sunday evening, February 25, 1968, did
144 you receive a phone call from William Tersinar? A. Yes.

Q. About what time was this? A. Approximately 6:30 in the evening.

Q. What, if anything, did he say to you and what, if anything, did you say to him? A. Well, he asked me if I had received a phone call or if the union had contacted me and I said no, I'd been at the lake all day and I had just come in now. He said Mike Vilencia's wife had called him, that they had been over there to his house pestering him today about joining the union, that everyone had signed up, and he says, "I'll tell you right now," he says, "if the union comes in we're going to close the doors."

Q. Now, do you know William Tersinar? A. Yes, I do.

Q. Have you worked, ever worked — well, what shift are you working on now? A. I'm on the first shift.

Q. First shift. Does he direct you in your work? A. He does.

Q. And you have occasion to receive orders from him? A. Yes.

Q. And you know his voice? A. Yes.

145 Q. That phone call on February 25, did you recognize the voice?

A. Yes, I did.

Q. And whose voice was it? A. William Tersinar's.

* * * * *

CROSS EXAMINATION

Q. (By Mr. Wright) Mr. Johnson, you've been around that plant, you say, since October 9, 1967? A. That's right.

Q. Have you ever heard Mr. Tersinar say anything about a union, one way or another, in the plant? A. Well, the only thing he said about a union, he said "if you want a union in, you can have the same union we have in Chicago."

Q. Did you ever hear him say anything derogatory about a union in the plant? A. No.

Q. And you've been around there since last October? A. That's right.

Q. Do you go to work every day? A. I have.

146 Q. What's your particular job in the plant? A. Right now I'm working on the presses.

Q. And what were you working on when you went up there in the first place? A. In the mill room, on the mills.

Q. How much chance do you get to go around the plant? A. Very little while I was in the mill room.

Q. How often do you see Mr. Tersinar? A. He very seldom even came up to see me when I was in the mill room.

Q. How about where you are now? A. I see him walk by, he comes up and checks the gaskets and says a few words, he goes again then.

Q. You say he's never mentioned union to you? A. No, nothing until that night after we changed from afternoon shift to day shift, that's when he mentioned that we could take and if we wanted a union in we could have the union from Chicago.

* * * * *

147

RAYMOND MONTI

was called as a witness by and on behalf of General Counsel and, after being sworn, was examined and testified as follows:

TRIAL EXAMINER: Sit down. What is your name?

THE WITNESS: Raymond Monti, M-o-n-t-i, 312 Carling Road, Wakefield, Michigan.

TRIAL EXAMINER: Proceed.

DIRECT EXAMINATION

Q. (By Mr. Selby) Have you ever been employed by the Quality Rubber Manufacturing Company? A. I have.

Q. For what period of time were you employed? A. I was there from either June 21 or 22, 1967, until February 26, 1968.

Q. What were your wages at the time of your termination? A. \$2.05 an hour.

Q. What was your job? A. I was known as a job cutter, I cut for the presses.

Q. You worked the day shift, seven to five p.m.? A. I worked the day shift from seven to five p.m.

Q. Mr. Monti, directing your attention to the month of April, 1967, did you have occasion to meet William Tersinar? A. I did.

148 Q. Where did you meet him? A. I met him in the Wakefield Bakery. I was introduced to him by my wife who works in the bakery.

Q. You then engaged him in a conversation; as a result of that conversation you went to the plant to apply for the job, is that right? A. I did, I asked him if there was any opportunity to go down to the plant and see what was going on and he says, "Yes, come anytime you wish."

Q. All right. Now, you visited the plant several times for a job?
A. Three or four times.

Q. And on about the third visit to the plant, do you recall a conversation with William Tersinar? A. I do.

Q. Where did it take place? A. It took place in the plant around the presses.

Q. Was anybody else in the immediate area? A. No, there wasn't.

Q. What, if anything, did he say to you and what, if anything, did you-

TRIAL EXAMINER: Wait a minute, wait a minute. What's the date of the conversation?

MR. SELBY: April, 1967.

TRIAL EXAMINER: Is that alleged?

MR. WRIGHT: No, sir, that's not alleged, Your Honor.

149 MR. SELBY: No, Your Honor, it's not.

TRIAL EXAMINER: How is it relevant?

MR. SELBY: It's relevant for purposes of background and animus.

TRIAL EXAMINER: Very well, proceed.

Q. (By Mr. Selby) What do you recall being said during that conversation? A. Well, he took me around the presses, they were not in operation but they were set up, and he explained to me how the presses worked and the different types of rubber. He also explained to me the duties of the men, what

they had to do. When he got through with that, out of the clear blue sky he came out and he says, "There's one thing we will not do in this plant, we will not have a union. We don't want anything to do with a union and we will not tolerate it."

TRIAL EXAMINER: Did you say anything to that?

THE WITNESS: I had nothing to say, sir.

TRIAL EXAMINER: All right, go ahead.

Q. (By Mr. Selby) Do you recall him, remember him saying anything else? A. He says, "We'll take the case of what we have in Chicago. Before the union came in," he says, "they all got a little bonus at Christmastime, and Thanksgiving or Easter they either got a ham or a turkey; when the union 150 stepped in, for all their troubles what did they get?" He says, "They got nothing but 5¢ an hour," he says, "and it did not pay for them to come in."

Q. Directing your attention to Monday, February 26, 1968, Mr. Monti, do you recall whether you went to work that day? A. I went to work that day with a full dinner pail and a change of clothes, because I used to change clothes every day.

Q. Did you go to work with anybody? A. I went to work with my son.

Q. What time did you get to work? A. Well, I think it was close to ten minutes of seven.

Q. Tell us what happened. A. When I got there the men were all around the table. There were only the men, no women. I went up to the table. I asked Nels Luoma, I says, "What's the trouble?" He says, "We have a labor trouble." At the same time Bill Tersinar started in and says, "I will not have nothing to do with a union, I will not tolerate it, you fellows are all fired."

Q. What happened next? A. He went to the time clock and started pulling out the cards, which ones I do not know. We, as the working people, we went into the shower room, took the clothes and whatever other stuff we had there, and left the plant.

* * * * *

151

CROSS EXAMINATION

Q. (By Mr. Wright) * * * And on the 26th of February of this year you went to work about 6:50? A. That's right.

Q. With your son? A. With my son.

Q. And when you got there you say there were no women in the plant?

A. I did not say that. I said there was no women around the table.

Q. There were women in the plant? A. There were women in the plant.

Q. There were also women in the same room with the table, were there not? A. There was what?

Q. In the same room the table's in? A. Oh, yes.

152 Q. Now, do you know whether or not they heard what you have just mentioned? A. I have my doubts very much they heard it.

Q. What makes you think that? A. For the simple reason the women were over there where the sorting and inspection work is done.

Q. But they could have heard it? A. The distance could have been, it could be even a little greater than the length of this room and there was no shouting there and no yelling.

Q. But, nevertheless, they still could have heard it? A. Oh, they could have, if they have every good ears, yes.

Q. You can hear a conversation the length of this room, can't you?

A. I can hear somebody talking back there, but I can't understand what it is.

Q. Now, you say that when you went in there, you and your son, that Mr. Tersinar was at the table? A. He was a short distance from the table.

Q. And they were all there at that time? A. All of them except my son, he came in last.

Q. I see. And he made the statements that you have attributed to him immediately after you got there? A. What was that?

Q. You say he made the statements you said he did immediately after you got there? A. That's all I heard, about him firing the whole bunch. I 153 wasn't there at the earlier part of it.

Q. So all you actually heard him say that morning was they were all fired? A. That's right.

Q. You didn't hear anything else? A. Not that morning, no.

Q. Now, that occurred about 6:50? A. Around ten minutes to seven.

MR. WRIGHT: No more questions.

TRIAL EXAMINER: Gentlemen, can we get a stipulation about the length of this room? The witness referred to the end of the room, can we get a stipulation about the distance from the witness chair to the rear of the room? Anybody want to start by hazarding a guess? Who thinks he is a good eye-measurer?

* * * * *

154 TRIAL EXAMINER: All right, it's stipulated the distance from where the witness is sitting to the rear of the court room is approximately 35 feet. Any redirect, Mr. Selby?

MR. SELBY: Yes, sir.

REDIRECT EXAMINATION

Q. (By Mr. Selby) Mr. Monti, can you tell us once again what you recall Mr. Tersinar saying as you walked in the door or after you sat down? Everything you remember him saying?

MR. WRIGHT: Just a minute, that's objected to as repetitious, he's already testified to it.

155 TRIAL EXAMINER: It's objectionable on the grounds it's at least three questions. I think you went into it, though, I'm not certain.

MR. WRIGHT: I just asked him if that was all he said, what he testified to.

TRIAL EXAMINER: Well, you went into it so it's proper redirect. Why don't you put it as question - put it as one question?

MR. SELBY: All right.

Q. (By Mr. Selby) What do you recall William Tersinar saying on February 26?

TRIAL EXAMINER: As you came in the room.

THE WITNESS: As I came into the room and approached this picnic table I came up to the table and asked Nels Luoma what the trouble was and he said, "We have a labor trouble," and at the same time Mr. Tersinar said, "I will not tolerate a union, I'll have nothing to do with them." At that he pointed his finger and he says, "You are all fired."

TRIAL EXAMINER: Any further questions on redirect?

MR. SELBY: One further, Your Honor.

Q. (By Mr. Selby) What did your son do that day? A. What did my son do? Well, when we came to the factory he had his own car and when we entered the parking lot he parked his car. There was a woman there, Verma Morrison, she's married, and she had her car in the middle of the parking 156 lot and she says, "Will one of you fellows please park the car." My son said, "Sure," so he took the car and I proceeded in. That's why he was after me.

Q. He did go in the plant after you? A. He did.

Q. And he walked out with you? A. Then he walked out with us immediately.

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LEONARD WESTEEN

was called as a witness by and on behalf of General Counsel and, after being sworn, was examined and testified as follows:

TRIAL EXAMINER: Sit down. What's your name?

157 THE WITNESS: Leonard Westeen.

TRIAL EXAMINER: Proceed.

DIRECT EXAMINATION

Q. (By Mr. Selby) Where do you live, Leonard? A. Route 1, Box 32, Bessemer, Michigan.

Q. How old are you? A. 21.

Q. Have you ever been employed by the Quality Rubber Manufacturing Company? A. Yes.

Q. Over what period of time did you work there? A. January 20, 1968, to February 26, 1968.

Q. What were you earning per hour? A. \$1.60.

Q. What hours did you work? A. I worked day shift, seven in the morning to five at night four days a week and then Friday it was from seven to three.

Q. You were a mill operator? A. Yes.

Q. Directing your attention to February 26, 1968, do you recall coming to work that day? A. Yes.

Q. Did you come to work with anyone else? A. Yes, I came to work with Douglas Twiggs.

158 Q. What time did you come to work? A. Well, we got to work about 6:40. Me and Douglas come walking in the plant and we were going to go punch in and Mr. Tersinar said not to punch in, but to sit down, so we sat down. We waited for the other fellows to come in and then he says, "I heard there was a union coming in here," and then he says, "If a union comes in here I'm going to lay the whole bunch of you off." Then he says, "I'm going to fire you guys." Then I got up — we got up and I went to the locker room and got my dirty clothes and went out.

Q. Approximately how much time did you wait until anything was said by William Tersinar once you got in the plant? A. Well, I waited about ten minutes.

* * * * *

CROSS EXAMINATION

Q. (By Mr. Wright) You say you got there about 6:40? A. Yes.

Q. And you and Douglas Twiggs came together? A. Yes.

159 Q. Then what did you do for the next twenty minutes? A. We came in and we were going to go punch in and then we sat down, Bill told us not to punch in so we sat down.

Q. Where did you sit down? A. At the table, the picnic table.

Q. Did you notice any women around there? A. I didn't see any.

Q. Did you look for any? A. No.

Q. You say Mr. Tersinar told you not to punch in that morning? A. Yes.

Q. What was he doing when you first went into the room? A. Standing by the picnic table there.

Q. Just standing? A. Yes.

Q. What did he do the rest of the time you were there? A. Then he was walking back and forth, that's about all.

Q. And he told you you were all fired? A. Yes.

MR. WRIGHT: No further questions.

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160

ROBERT WHITBURN

was called as a witness by and on behalf of General Counsel and, after being sworn, was examined and testified as follows:

TRIAL EXAMINER: Sit down. What's your name, please?

THE WITNESS: Robert John Whitburn.

DIRECT EXAMINATION

Q. (By Mr. Selby) How do you spell that? A. W-h-i-t-b-u-r-n.

Q. Where do you live? A. Bessemer, 309 Silver Street, Bessemer, Michigan.

Q. Did you ever work at the Quality Rubber Manufacturing plant?

A. Yes, I did.

Q. Over what period of time were you employed there? A. From October 15 to May 5.

Q. October 15, 1967? A. To May 5, 1968.

Q. What was your job? A. Press operator.

Q. What were you paid when you went to work? A. \$1.50 an hour.

Q. And at the time that your employment was terminated what were 161 your earnings? A. \$1.90.

Q. Until Friday, February 23, 1968, what shift were you employed on, what hours did you work? A. From seven to five.

Q. Seven a.m. to five p.m.? A. Yes, day shift.

Q. And at that time did you have a conversation with William Tersinar?

A. Yes. He told me that I'd have to go on the day shift, the afternoon shift, because there was too many guys on day shift.

Q. Did you begin working on the afternoon shift? A. Yes, that night.

Q. How many days did you work on that shift? A. One.

Q. What day was that? A. That was February 26.

Q. The following Monday? A. Yes.

Q. Now, directing your attention to after the time you punched in on Monday, February 26, do you recall seeing other employees near the time clock, milling around the time clock area? A. Yes.

162 Q. Who was there? A. Clarence Johnson, Einar Johnson, Taisto Hendrickson, Mr. William Tersinar and his son, John Tersinar, and myself.

Q. Do you recall what, if anything, William Tersinar said and what, if anything, any of the employees said? A. He was telling us that the company didn't want the union in there and if they did come in there they'd close the doors just as fast as the doors were opened. Then he started telling us about the union in Chicago where there was a few guys they had fired, the guys thought the union could help them but they never helped them a bit. Then he started telling us again about how the guys don't like the union there now and they want to get rid of it and if we did get a union in we wouldn't want it, anyhow.

Q. What else do you remember? A. Then he asked me if I'd signed a card.

Q. Who asked you? A. Mr. William Tersinar, if I'd signed a union card, and I said, "Yes." He says, "It didn't help you very much, did it?" And that was it.

TRIAL EXAMINER: What time was it when you were clocking in on the 26th?

THE WITNESS: Four forty, around there.

* * * * *

163 Q. (By Mr. Selby) Directing your attention to the month of March or April, do you recall being present with employees Swearingen, Grant and

an individual who is the carpenter in the plant and Mr. Bill Tersinar?

A. Yes.

Q. Near the office? A. Yes, I do.

* * * * *

Q. (By Mr. Selby) What do you recall being said at this time?

A. Well, we were standing around there talking while the presses were up and he came out and he started talking about the union.

Q. Who? A. Mr. Bill Tersinar, and he says he had orders from the 164 head plant in Chicago to close the plant, but he said he wanted to keep it open because he owned a home here and the chemist had a home here and he liked it here.

Q. Did he say why he had orders to close the plant down? A. Because of the union, but he said if the union did come in he would have to close it down after that.

Q. And what did he say about his home? A. He said he'd bought a brand new home.

Q. What about it? A. That he liked the area and he didn't want to lose the money on the home, I imagine.

Q. Now, was this the only time that a statement of this nature was made? A. No, it was made several other times, all over the plant.

MR. WRIGHT: I object, now, just a minute, unless this witness knows of his own knowledge.

TRIAL EXAMINER: Well, I shall strike that last answer, that it was made all over the plant.

MR. SELBY: Why are you going to strike it, Your Honor?

TRIAL EXAMINER: It hasn't been brought to the responsibility of the Respondent. I don't care what is said all around the plant.

MR. SELBY: If William Tersinar made that statement?

TRIAL EXAMINER: He didn't make it to the witness. It's hearsay if he made it to somebody else.

165 Q. (By Mr. Selby) Did you overhear the same or similar statements made by William Tersinar to other employees? A. Yes.

TRIAL EXAMINER: That statement will stand.

Q. (By Mr. Selby) Approximately how many times do you recall overhearing such a statement made to other employees or to yourself again?

A. Two or three.

Q. In about what period of time did this occur? A. Around May, April or May.

Q. April or May? A. Yes.

TRIAL EXAMINER: The April may stay in. The May goes out. May is not within the pleadings. You moved to amend to include March and April and I granted it.

MR. SELBY: Well, that's with respect to the additional statements that were made.

TRIAL EXAMINER: Uh huh, that's right. Anything else from this witness?

MR. SELBY: Yes, Your Honor.

Q. (By Mr. Selby) Did you have any further conversations with Bill Tersinar in the plant in about March or April, 1968, concerning voting? A. There was a conversation where I wasn't specially spoken to, but there was a conversation where he said that -

166 MR. WRIGHT: Now, just a minute, unless this witness heard the conversation.

TRIAL EXAMINER: Please lay the proper foundation for it, rather than taking the conversation first. Get time, place and circumstances, please, Mr. Selby.

MR. SELBY: I asked the witness whether during March or April he did. Now, the witness has already indicated to me that he can't place it specifically in point of time, so I'm asking the witness whether or not it's March or April.

TRIAL EXAMINER: It's not very clear. Do you remember where these conversations took place?

THE WITNESS: By the presses.

TRIAL EXAMINER: And who was present?

THE WITNESS: Mr. Tersinar the carpenter, I'm not sure who else was there.

TRIAL EXAMINER: As to time, how closely can you pin it down as to when this was?

THE WITNESS: In May.

TRIAL EXAMINER: In May?

THE WITNESS: No, I mean in April.

TRIAL EXAMINER: In April. All right, go ahead now, what was said?

THE WITNESS: Well, he said that if —

Q. (By Mr. Selby) Who? A. Mr. Tersinar said that if the union was to come in everyone would have to take a vote and that the guys walked off 167 wouldn't get to vote because they were no longer employed there, they could not vote.

* * * * *

Q. (By Mr. Selby) Were you asked specifically yourself about William Tersinar, about a vote?

TRIAL EXAMINER: Do you remember William Tersinar asking you?

THE WITNESS: No.

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170

FURTHER CROSS EXAMINATION

Q. (By Mr. Wright) Now, you say about the 23d of February you were moved from the day shift to the night shift? A. Yes, sir.

Q. So you were not in the plant on the morning of the 26th of February? A. No, I wasn't.

Q. Who do you say was with you on the afternoon of the 26th?

A. There was Einar Johnson, Clifford Johnson, Mr. Tersinar, John Tersinar, myself and Taisto Hendrickson.

Q. Who's the last one? A. Taisto Hendrickson.

171 Q. Oh, Hendrickson. They were all members of the so-called night shift or afternoon shift? A. Yes.

Q. And where is Mr. Tersinar supposed to have made these statements to which you testified? A. At a partition between where the women work and the men work.

Q. That big room is divided into two main parts, is it not, the big room at the plant? A. Yes.

Q. And the presses or the molds, the ovens, are in the back part, are they not? A. They're in the middle.

Q. In the middle? A. Yes. The mills are on the end.

Q. Was it in the mill room or the press room or where? A. It was in the press room.

Q. And who were there besides you?

TRIAL EXAMINER: You just asked for a list of people and he gave it to you.

MR. WRIGHT: I asked who was with him when the statement was made.

THE WITNESS: All those persons were there.

Q. (By Mr. Wright) They were all there? A. Yes.

172 TRIAL EXAMINER: Was this near the time clock? Is that the general area? I don't know the geography of this plant.

THE WITNESS: No, the time clock is on the right wall and this is right in the middle.

TRIAL EXAMINER: This is the room that has the picnic table in one part and women working in another part of it?

THE WITNESS: Yes.

TRIAL EXAMINER: Is that correct?

THE WITNESS: Yes.

TRIAL EXAMINER: All right, I just wanted to understand. I think I see four rooms by this time. There may be more that I haven't discovered yet.

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JOE SOLTIS

was called as a witness by and on behalf of General Counsel and, after being sworn, was examined and testified as follows:

TRIAL EXAMINER: Sit down. What is your full name, please?

THE WITNESS: My name is Joe Soltis.

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TRIAL EXAMINER: S-o-l-t-i-s?

THE WITNESS: Correct.

DIRECT EXAMINATION

Q. (By Mr. Selby) Where are you employed, Mr. Soltis? A. I am employed with the United Steelworkers of America as a staff representative for this area.

Q. Directing your attention, Mr. Soltis, to the afternoon of February 26, 1968, did you place a phone call to the Quality Rubber Manufacturing Company? A. Yes, I did.

Q. Who did you call? A. I talked to Mr. William Tersinar.

Q. Did he identify himself as William Tersinar, or did you know his voice? A. A girl answered the phone when I made the call and I asked for Mr. Tersinar and he came to the phone shortly after that.

Q. Did you have a conversation with him? A. Yes, I did.

Q. What, if anything, did he say and what, if anything, did you say?

A. I mentioned the fact to him that I had met with the employees who were discharged at Quality Rubber that morning and in my discussions with these people my position was that they were discharged by Mr. Tersinar and I requested Mr. Tersinar to re-employ these people. He said he wouldn't. He said one or two he may take back later, but no sir. And I says, "Well, you know, after all, they have a right to organize into a union if they so desire." He said, "Hell, if they wanted a union," he says, "they could have notified me." He says, "I would have got a union, we have one in Chicago that could service them." I said, "Evidently they felt they wanted to be serviced by the United Steelworkers of America." He says that the employees were not discharged, that they had quit and that he was not going to take them back. I said in all fairness I felt that I should ask him to take them back, but if he wasn't I would have to take further action.

Q. Do you remember anything else? A. No, I don't.

Q. Did you tell him anything about the number of employees that wanted the Steelworkers? A. I did mention the majority of the employees had signed up and that they wanted to be represented by the Steelworkers.

TRIAL EXAMINER: Did you tell him that?

THE WITNESS: Yes.

TRIAL EXAMINER: What did he say?

THE WITNESS: He said, when I made that statement he said, "Hell," he said, "if they wanted a union they could have approached me and we would have got the union that we have down in our Chicago plant."

175 TRIAL EXAMINER: Proceed, Mr. Selby.

MR. SELBY: Your Honor, at this time I'd like to introduce several letters which represent communications between the parties. The dates are indicated on the documents and the persons who wrote the documents are also listed. Respondent has indicated they would stipulate to the authenticity of the documents and also that they were sent on the days indicated on the letters and received in due course.

TRIAL EXAMINER: You have there the originals?

MR. SELBY: Yes, Your Honor.

TRIAL EXAMINER: Where do they come from? Let's take them in order.

MR. SELBY: General Counsel's 9 is a letter dated February 26, 1968, addressed to the Quality Rubber Manufacturing Company from Joseph Soltis.

TRIAL EXAMINER: This is the original. Mr. Wright, does this come from your files?

MR. WRIGHT: I'll take a look at it.

MR. SELBY: These are all original documents.

TRIAL EXAMINER: I know.

MR. SELBY: And they were shown to Respondent.

MR. WRIGHT: That looks as though it came from my files, yes.

TRIAL EXAMINER: All right. Was it received, Mr. Wright?

176 MR. WRIGHT: Otherwise, how would I get it?

TRIAL EXAMINER: Well, I have to take it step by step. Any objections to its receipt in evidence?

MR. WRIGHT: No.

TRIAL EXAMINER: All right, it is received. Go ahead.

(General Counsel's Exhibit 9 for identification was received in evidence.)

MR. SELBY: General Counsel's 10 is another letter on the letterhead of Quality Rubber Manufacturing Company directed to Joseph Soltis signed by William Tersinar.

(The above-mentioned document was marked for identification as General Counsel's Exhibit 10.)

TRIAL EXAMINER: Is that conceded to be a letter written by your client?

MR. WRIGHT: Yes, it is.

TRIAL EXAMINER: All right. Are you offering it in evidence?

MR. SELBY: Yes, Your Honor.

TRIAL EXAMINER: Is there any objection?

MR. WRIGHT: No.

TRIAL EXAMINER: It is received.

(General Counsel's Exhibit 10 for identification was received in evidence.)

MR. SELBY: GC 11 is a letter on the letterhead of the United Steelworkers of America directed to Quality Rubber Manufacturing Company signed
177 by Joe Soltis.

(The above-mentioned document was marked for identification as General Counsel's Exhibit 11.)

I offer that into evidence.

TRIAL EXAMINER: Mr. Wright, is it conceded? Do you concede your client received it?

MR. SELBY: It's dated March 15, 1968.

TRIAL EXAMINER: Mr. Wright, do you concede your client received it?

MR. WRIGHT: I think this morning we checked it and they said they did. This is one I didn't have in my files, but my client says they go it.

TRIAL EXAMINER: Very well, it is received.

(General Counsel's Exhibit 11 for identification was received in evidence.)

May I see it? We're getting into late dates. March 15. Go ahead.
That is received.

MR. SELBY: GC 12 is a letter on the letterhead of Quality Rubber Manufacturing Company, dated March 18, 1968, addressed to the United Steelworkers of America, and signed by William Tersinar.

(The above-mentioned document was marked for identification as General Counsel's Exhibit 12.)

TRIAL EXAMINER: Mr. Wright, do you concede your client wrote that letter and sent it?

178 MR. WRIGHT: No objection.

TRIAL EXAMINER: All right, received.

(General Counsel's Exhibit 12 for identification was received in evidence.)

Go ahead, Mr. Selby.

Q. (By Mr. Selby) After the exchange of letters which we have just introduced into evidence as GC 9, 10, 11 and 12, was there, in fact, a meeting between yourself and representatives of the company? A. Yes, there was.

Q. When did this meeting take place? A. This meeting took place on March 25 at 9:30 a.m.

Q. Where? A. At the Quality Rubber Manufacturing Company office.

Q. Who did you come to the plant with, if anyone? A. I came to the plant with Glenn LeGassa and Douglas Twiggs.

Q. And who was there for the company? A. For the company Bill Tersinar was there, Mr. Burns was there, and another individual, I forget his name, I understand he is the chemist.

Q. Do you see him in the room now? A. Yes, I do.

Q. Would you point at him if you see him? A. I think he's that gentleman.

Q. Mr. Arentz, is that right?

179 MR. ARENTZ: That's right.

Q. (By Mr. Selby) What happened at that meeting? First of all, where did it take place? A. It took place in, I think it was the office of Quality Rubber Manufacturing Company plant. When we entered the room Mr. Burns introduced himself and Mr. Tersinar and Mr. Arentz and I, in turn, told them who I was, and I introduced Twiggs and LeGassa. Mr. Burns stated he was willing to sit down and meet with me, but he felt that Mr. Legassa and Mr. Twiggs shouldn't participate in the meeting. So, I asked the two people to step out into the lobby, which they did. So, we sat down and Mr. Burns asked me the purpose of the meeting and I told him the purpose of the meeting was to meet with the company to see whether the company would agree that the employees should be represented by the Steelworkers Union because of the fact we felt we had a majority of the people who had signed authorization cards for the Steelworkers and who wished to be represented by the Steelworkers. Mr. Burns stated that he didn't want to get into a quarrel or an argument and I said I didn't intend to get into a quarrel or an argument, I was just there for the purpose to see whether the company would agree to recognize the union as the bargaining representative for their employees. Mr. Burns asked if I had anything to show that the majority of the employees desired to be represented by a bargaining agent and I said yes, I had twenty signed cards, but I wouldn't give him the cards, I'd give him

180 Thermofax copies of these cards. He asked me if he could have them and I said yes. He said the purpose of his request was to check them with the payroll to see if they were signed by their employees. He took these Thermofax copies and gave these to Mr. Arentz who left the room, presumably to check the cards against the payroll data or whatever he used.

(The above-mentioned documents were marked for identification as General Counsel's 13(a) - (j).)

Q. I hand you what's been marked as General Counsel's Exhibits 13(a) through 13(j) and ask you if you recognize those documents? A. Yes, I do.

Q. What are they? A. These are Thermofax copies of the authorization cards that were signed by the employees of Quality Rubber.

Q. What was done with those Thermofax copies? A. These Thermofax copies were given to the company to check these against the payroll and when Mr. Arentz came back he stated that he took the liberty of marking an "X" through the card where the employees were listed on their payroll.

Q. So, these are the Thermofax copies that were handed to Burns who in turn handed them to Mr. Arentz for purposes of checking them against their payroll? A. That is correct.

181 Q. I noticed several "X" 's alongside the names of several employees. Were those on there when you handed them to Mr. Burns? A. They were not.

Q. When did you first see them? A. When Mr. Arentz came back from another room. He said he took the liberty of marking "X" 's next to the card where the employee was on the payroll of Quality Rubber, where these people were employees of Quality Rubber.

Q. Who said that? A. Mr. Arentz.

TRIAL EXAMINER: Where are we, Mr. Selby?

MR. SELBY: We're just about at the point of my offering General Counsel's 13(a) through (j).

TRIAL EXAMINER: The procedure is to offer them so that I know where we are, and then to hand them to counsel so he knows it's time for him to make an objection. I don't know -

MR. SELBY: The Respondent has been given these documents, General

Counsel's Exhibits 13(a) through (j).

TRIAL EXAMINER: Now I understand.

MR. SELBY: And I move for their admission.

TRIAL EXAMINER: Any objection, Mr. Wright?

MR. WRIGHT: Except inasmuch as the original cards are in I think they're superfluous.

182 TRIAL EXAMINER: Well, these seem to serve a different function and I think they are relevant and material. They are received, 13(a) through (j) are received in evidence.

(General Counsel's Exhibit 13(a) through (j) for identification was received in evidence.)

Proceed.

Q. (By Mr. Selby) What happened when Mr. Arentz returned?

A. Mr. Burns and Mr. Tersinar went through the Thermofax list and checked the "X" 's next to the designated cards and then he told me, he says, "Well, this isn't a majority."

TRIAL EXAMINER: What'd he say?

THE WITNESS: "This isn't a majority of the employees." He says, "This is only 7 employees and we have 18 employees on the payroll." I said - he said, "Don't you agree?" And I said, "No, I don't. On the 26th of February these people had already signed these cards, prior to the 26th of February, but they were discharged, and we had a majority at that time." Mr. Tersinar injected himself in the conversation and he said, "Those people quit." He said, "Therefore, we can't count them as being our employees." Well, I mentioned the fact I wasn't there to discuss the matter that occurred on the 26th of February, but we had a majority at that time and that was

my reason for approaching the company. Mr. Burns mentioned at that time that a Federal agency had been in and checked with the company and maybe it would be the best to leave it up to these people to determine whether we

183 had a majority of the people at the Quality Rubber Company. He asked me, "Don't you agree?" I told him, "No, I do not, because we feel that we have a majority of the employees and because of the certain incident that happened, the company took the action it did, we don't have a majority at this time."

* * * * *

THE WITNESS: And Mr. Burns then stated, "Maybe it would be best to have the National Labor Relations Board conduct the election to determine whether we had a majority or not and we would wait for a determination by this agency."

TRIAL EXAMINER: Proceed.

THE WITNESS: At that time he adjourned the meeting.

TRIAL EXAMINER: Go ahead, Mr. Selby.

Q. (By Mr. Selby) Going back once again to the point in time when the Xerox copies of the cards were brought back, General Counsel's 13(a) through (j), do you recall specifically what Burns said about the "X" 's, what they represented? A. He said specifically that the "X" 's were marked next to the cards of employees who were employed at the Quality Rubber Manufacturing Company.

* * * * *

184

CROSS EXAMINATION

Q. (By Mr. Wright) Now, Mr. Soltis, you made no claim on Quality Rubber to represent a majority of the employees until the afternoon of February 26? A. That's right.

Q. So, that at the time of this occurrence on the morning of the 26th you had not made any demand on the company or any suggestion to the company that your union represented the employees? A. When I spoke to Mr. Tersinar.

Q. That isn't the question. I said at the time of the occurrences on the morning of the 26th of February, at that time you had not informed Quality Rubber in any way that you claimed to represent a majority of the employees? A. Yes, I did.

Q. Before the occurrences on the morning of the 26th? A. No, not before.

Q. That's what I asked you. A. No, I didn't.

Q. So, that the first time you made any contact with them was when you called Mr. Tersinar on the afternoon of the 26th? A. No, I called Mr. Tersinar at eight o'clock in the morning on the 26th.

185

Q. You hadn't mentioned that before. How did you happen to do that? A. Well, at seven o'clock, or — yes, exactly at seven o'clock I received a telephone call from Mr. LeGassa stating that they were fired and I asked him the reason they were discharged and Mr. LeGassa said "because we're attempting to form a union." So, I placed a phone call to Mr. Tersinar, introducing myself, stating the fact that the employees had signed authorization cards and wanted to know the facts as to the reason for the discharge. Mr. Tersinar said the employees were not discharged, they quit. I said, "Quit? What do you mean, 'quit?'" And he says, "They wouldn't work; so, if they don't work," he says, "there's no job." "So, if there's no job," he says, "they quit."

Q. No strike was called at Quality Rubber? A. There was no strike called.

Q. The employees there on the morning of the 26th of February made

no statement that it was a sit-down or a strike of any kind? A. No sir.

Q. And at that time the company had not been notified by you or anybody else the union claimed a majority, Isn't that right? A. Well, I'd like to point out that the cards were given to Mr. LeGassa on the 24th.

186 Q. Well, excuse me, that isn't the question.

TRIAL EXAMINER: That wouldn't be responsive to the question, although it's the third time it's been asked; prior to the time when the events between Mr. William Tersinar and the employees occurred on the morning of February 26, Monday, prior to that time had you notified the company that your union represented a majority of the workers at Quality Rubber?

THE WITNESS: No.

TRIAL EXAMINER: All right. Is that what you wanted, Mr. Wright?

MR. WRIGHT: Yes.

TRIAL EXAMINER: All right.

Q. (By Mr. Wright) Now, in these discussions you had with Mr. Burns and Mr. Tersinar and whoever else might have been involved in them, the main point of difference was whether or not these nine men were fired or quit, is that it? A. There was no difference of opinion. I just requested the company to recognize the union because we had a majority and they said we didn't have a majority.

Q. That depended, didn't it, on whether or not these nine men quit or were discharged?

TRIAL EXAMINER: That's a conclusion of law. That's a decision I will make, not the witness.

187 MR. WRIGHT: I know, but just from the discussion, they got into the discussion -

TRIAL EXAMINER: No, no, no, I say I will make that decision.

MR. WRIGHT: I realize that.

TRIAL EXAMINER: The witness will not answer it. Next question, please.

MR. WRIGHT: You mean I can't ask him whether or not they discussed it?

TRIAL EXAMINER: You can't ask him what the decision in this case should be.

MR. WRIGHT: No, I'm not asking him that.

TRIAL EXAMINER: Please rephrase your question. Perhaps we'll get through this better.

MR. WRIGHT: I'm asking him what occurred at the meeting, not what you're going to do.

TRIAL EXAMINER: All right, please ask it again.

Q. (By Mr. Wright) Mr. Soltis, at this meeting that you had in regard to whether or not the union had a majority, wasn't the main disagreement you had with Mr. Burns and Mr. Tersinar whether or not these nine men had quit or whether they had been fired? A. We didn't even enter that into the discussion.

TRIAL EXAMINER: You did not discuss that point?

THE WITNESS: No.

188

TRIAL EXAMINER: Next question, please.

Q. (By Mr. Wright) Well, didn't you claim that you represented all of those who had signed the cards? A. Yes sir.

Q. And didn't they tell you that they figured nine of those had quit? A. That's what Mr. Tersinar said, yes.

Q. Wasn't that the argument, then, you had? A. We had no argument.

Q. You didn't have any argument? You didn't discuss the matter? A. I said I wasn't there to discuss what occurred on the 26th, I was there to ask the company to recognize the Steelworkers Union as the bargaining agent for its employees.

Q. Regardless of what had taken place on the 26th?

MR. SELBY: Objection.

TRIAL EXAMINER: Did you say that? Did you say you were there to discuss that question regardless of what had taken place on the 26th?

THE WITNESS: That was my position, yes.

TRIAL EXAMINER: Well, did you say that?

THE WITNESS: No, I didn't.

TRIAL EXAMINER: All right. The question was, did you say it, and the answer is no. Go ahead.

Q. (By Mr. Wright) You say now it was your position? A. That's
189 right.

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GEORGE GOLEMBESKI

190 was called as a witness by and on behalf of General Counsel and, after being sworn, was examined and testified as follows:

TRIAL EXAMINER: Sit down. Please give us your full name.

THE WITNESS: George Golembeski.

TRIAL EXAMINER: G-o-l-e-m-b-e-s-k-i?

THE WITNESS: That's right.

TRIAL EXAMINER: George. Go ahead, proceed, Mr. Selby.

THE WITNESS: 507 Ashland Avenue, Wakefield, Michigan.

TRIAL EXAMINER: Thank you.

DIRECT EXAMINATION

Q. (By Mr. Selby) Were you ever employed by the Quality Rubber Manufacturing Company? A. Yes.

Q. Over what period of time? A. From the 6th of November to the 28th of March.

Q. November '67 to March '68? A. Yes.

Q. What shift did you work? A. I worked nights.

Q. What were you earning at the time of your termination?
A. \$1.90.

Q. Directing your attention to Monday, February 26, did you attend a meeting? A. That's right.

191 Q. What type of meeting was this? A. Just all the fellows that was discharged in the morning, they had a meeting with Joe Soltis.

Q. Where was that meeting? A. The Hunter's Inn at Bessemer, Michigan.

Q. Do you recall what time this was? A. I don't remember exactly.

Q. Well, what — A. About ten o'clock, somewhere in there.

Q. In the morning, anyway? A. In the morning, yes.

Q. Do you remember what was discussed, generally, at the meeting?

MR. WRIGHT: Now, if the Court please, I don't think that has any materiality, what was discussed at the meeting.

TRIAL EXAMINER: You're quite right, it hasn't. It may be material to something, but it's not relevant or competent here, except insofar as it may be a purely preliminary question. He can say they discussed various subjects. It doesn't bind you, but it may lead to something that may be binding on you. So, on the grounds that I consider the question preliminary, I will overrule your objection. Proceed, Mr. Selby. Will the witness please tell us in very general terms what subjects were discussed at the meeting?

THE WITNESS: We discussed the discharge of these fellows.

192 TRIAL EXAMINER: That's rather obvious. Go ahead, Mr. Selby.

Q. (By Mr. Selby) Did you go to work that day? A. No.

Q. Why not? A. I was sick.

Q. Were you sick at the time you were at this meeting? A. I didn't feel too good, but I went, anyway.

Q. Did you go to work the following day? A. No.

Q. Why not? A. I didn't feel too good, either. I was sick.

Q. Did you receive a phone call from LeGassa that day or the next day? A. Yes, he told me the afternoon shift was working on the day shift.

* * * * *

Q. As a result of that conversation, what, if anything, did you do on Wednesday? What did you do, did you make a phone call Wednesday?

193 A. No, I didn't make no phone calls until — oh, Wednesday morning I called up and he told me —

TRIAL EXAMINER: Wait a minute, wait a minute, who's "he" that

you called?

THE WITNESS: Bill, William Tersinar, Mr. Tersinar.

TRIAL EXAMINER: All right, you called him. Did you get him on the phone?

THE WITNESS: Yes.

TRIAL EXAMINER: What did you say to him?

THE WITNESS: I asked him if it was true, all this stuff, you know, that the afternoon shift was working on day shift. Then he discharged me, too.

TRIAL EXAMINER: Well, will you please tell us what he said?

THE WITNESS: He told me that the afternoon shift was out and they were working on day shift.

TRIAL EXAMINER: What did you say?

THE WITNESS: I told him, if I remember right, I told him I'd be ready to go to work that day, but he says, "No, you'd better stay home, too." I says, "OK."

TRIAL EXAMINER: Go ahead.

Q. (By Mr. Selby) When did this conversation take place, about what time? A. About 6:15.

194 Q. In the morning? A. In the morning.

TRIAL EXAMINER: That was this Wednesday, this telephone conversation? Or Tuesday?

THE WITNESS: Wednesday.

TRIAL EXAMINER: Wednesday. That would be February 28?

THE WITNESS: That's right.

Q. (By Mr. Selby) Had you had any conversation with William Tersinar between the meeting on Monday, the 26th of February, and Wednesday, the 28th of February, any conversation in that time? A. Just what I had on the telephone.

Q. On Wednesday? A. That's right.

Q. No other conversation? A. No.

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CROSS EXAMINATION

Q. (By Mr. Wright) When - well, Mr. Golembeski, you were sick for quite awhile around the 22d of February, 1968, weren't you? A. That's right.

195 Q. And how long had it been since you had done any work prior to the 22d - or, 26th of February, 1968?

TRIAL EXAMINER: Do you remember how long you'd been out before that?

THE WITNESS: Before what day?

TRIAL EXAMINER: Before Monday when the men were discharged.

THE WITNESS: One week.

Q. (By Mr. Wright) You'd been out one week at that time? A. Yeah.

Q. So you proposed to come back on when, the 28th? A. The 28th.

Q. The 28th. So, you had recovered enough so you could come back?

A. That's right.

Q. You called Mr. Tersinar about it and he said what, the afternoon shift had been moved over to the morning shift? A. That's right.

Q. And that you might as well stay home, is that it? A. That's right.

Council Room
City Hall
Wakefield, Michigan
Thursday, June 27, 1968

* * * * *

203 TRIAL EXAMINER: Doesn't that Exhibit accept the union's offer to meet and list the names of the people in the unit?

MR. SELBY: Here is GC 10.

TRIAL EXAMINER: "The following is a list of our employees" and there are 18 employees. There were 6 discharged the day before. When were those other three discharged?

MR. COLLINS: The Wednesday before.

MR. SELBY: February 21, the prior Wednesday.

MR. WRIGHT: Well, of course, our position is they quit, they weren't discharged.

TRIAL EXAMINER: Well, we're avoiding that question. We're getting the evidence so that I will have the material from which to write my decision, depending on which way I decide those issues. You know the provision of the Act that a person whose employment has been discontinued or has been fired is considered an employee, you're familiar with that?

MR. WRIGHT: Oh yes.

TRIAL EXAMINER: I'm quoting that very broadly; but what I can't understand, Mr. Selby, is why you don't build this thing block by block? I'll be able to follow from one list to another. I don't know why you say you don't want a particular list as of a particular date. It isn't going to bite you in any way. It doesn't commit you. It simply forms a foundation block upon which you build whatever structure you contend is the proper one. Now, certainly there's plenty of evidence of a demand here on the 26th of February. Here's a letter. I'm not sure it proves a legal demand, there may be some infirmity. But, on the face of it, it looks like a demand to me and we're certainly concerned with the dates around February 26, perhaps earlier, perhaps

later. I just don't understand your reaction in saying that you don't want the list as of February 22 and February 27.

MR. SELBY: We are concerned, at least initially, I believe, with the unit, the composure of the unit, the numbers of the unit, as of the receipt of the demand, valid demand.

TRIAL EXAMINER: Well, it could possibly be on February 27, couldn't it?

MR. SELBY: February 27? Yes, Your Honor.

TRIAL EXAMINER: Here's your letter stamped in by the company on February 27.

MR. SELBY: We also have GC 10.

TRIAL EXAMINER: Which acknowledges it and gives a list. You're not bound by this list, you're not bound by any list. I'll decide what the list is, but I've got to have something on which to make my decision; a basic foundation plus your argument and plus whatever other evidence there is will lead me to what I will consider a proper list. I just can't understand your argument.

MR. SELBY: My argument is I don't believe there's any necessity to show any other list than the one on the 27th of February.

205 TRIAL EXAMINER: Mr. Selby, there is going to be one list ultimately, the list I decide is the proper list as of the date of whatever demand I decide is the proper demand. Now, you can't tell me which one to choose. You can argue from various things, but I've got to have a lot of evidence here. The Respondent is willing to give you certain material. Now, you should take it and add to it and interpret it, but not refuse it.

MR. SELBY: Well, I think there are proper circumstances when I could refuse information if I feel it's not necessary to a case. I'll look at the information and I'll try to determine whether I think it's necessary to my case to have those prior lists of employees in evidence. If I don't think it's necessary I'm not going to offer them in evidence.

TRIAL EXAMINER: I'm going to give you a little more time on this and then I'm going to take a hand.

Mr. Selby, are there separate lists which have been handed to you? That is, one for February 22 and one for February 27? That is, duplicate lists insofar as the same employees are there?

Mr. Wright, will you please tell me what you have handed Mr. Selby according to your characterization?

MR. WRIGHT: We've handed him a list of the names on the payroll,
206 shown by our records, on the 20th of February, on the 22d of February and
on the 27th of February.

TRIAL EXAMINER: Are three separate lists?

MR. WRIGHT: Three separate lists.

TRIAL EXAMINER: And there's a great deal of duplication?

MR. WRIGHT: They have the same names on several of the lists, yes.

TRIAL EXAMINER: So, there are three lists, each complete?

MR. WRIGHT: Each complete.

TRIAL EXAMINER: All right. The Complaint alleges, Mr. Selby, that on about February 26 the union requested Respondent to bargain and on the 27th he refused. Now, we're dealing within the confines of your Complaint. You've got some proof about the 27th, 26th and 27th. Now, I'd like you to make up your mind right now which of those lists you want to put in and what other steps you wish to take with respect to them.

MR. SELBY: Your Honor, I have no objection to having these documents in evidence and I will offer them as General Counsel's exhibits at this point.

TRIAL EXAMINER: Well, do it, will you, please? Are they labeled clearly so that we know what they are?

MR. SELBY: Yes sir, Your Honor. I will refer to them by number.

TRIAL EXAMINER: All right, what is 14, a list of what day? This is
207 for identification purposes.

MR. SELBY: One moment, Your Honor.

TRIAL EXAMINER: And the record will show that these are lists which have been handed to you, completely prepared and handed to you by Respondent's counsel.

MR. SELBY: GC 14 for identification is a list of purported employees as of February 20, 1968; GC 15 lists purported employees as of February 22, 1968; and, GC 16 lists purported employees as of February 27, 1968.

(The above-mentioned documents were marked for identification as General Counsel's Exhibits 14, 15 and 16.)

I offer them in evidence.

MR. WRIGHT: And there is no objection.

MR. COLLINS: Do you have any other copies of that?

MR. WRIGHT: Those are the only copies I've got. I can get you copies, but those are the only ones I happen to have.

TRIAL EXAMINER: Now, what position are you taking by offering these, Mr. Selby? Are you offering those to prove the employees on those dates?

MR. SELBY: No sir, Your Honor, I am certain that we are in dispute over some of those employees and they will be used only as reference points to hopefully resolve what the true unit is in this case.

208 TRIAL EXAMINER: Have you any information to work on these lists?

MR. SELBY: How do you mean?

TRIAL EXAMINER: Well, do you know what to do with them? You've got lists and you say they're not accurate. Do you have the information that will tell you where and how they're accurate, inaccurate?

MR. SELBY: I'm going to question Mr. Tersinar on that point.

TRIAL EXAMINER: Well, are you going to call him as your witness? You are, aren't you?

MR. SELBY: Yes, I will.

TRIAL EXAMINER: All right. Suppose we keep them for identification at this point. I will not accept them until I see what the situation is, because by offering them in evidence you're giving them certain standing in your case.

MR. SELBY: Well, it was not my desire to do so, Your Honor.

TRIAL EXAMINER: I didn't think so. You see, Mr. Selby, I am not and I don't want other people playing games. This is a search for truth in an effort to administer justice and it doesn't require any conspiratorial attitudes at this point. You should know what's up. I'm saying this generally, not personally.

* * * * *

209

WILLIAM TERSINAR

was called as a witness by and on behalf of General Counsel and, after being sworn, was examined and testified as follows:

TRIAL EXAMINER: Sit down.

DIRECT EXAMINATION

210

Q. (By Mr. Selby) Give us your name, please? A. William Tersinar.

Q. Where do you live? A. 104 Sunday Lake, Wakefield, Michigan.

Q. Where are you employed? A. Quality Rubber.

Q. What is your position with the company? A. Superintendent, plant manager.

* * * * *

218

Q. Yesterday when you were here at the hearing, who was in charge of the plant? A. Well, my son takes orders from me and he is in charge — well, he's not in charge, he is directing the plant. Somebody has to be there directing it.

219

Q. OK. A. And he has experience enough to do so.

Q. OK, and at least up until February 26, and correct me if I'm wrong, he was in charge of the night shift, was he not? A. Only through me, orders through me that he was able to give orders. He would get orders from me before he could deliver the orders.

Q. OK. Now, normally you were not at the plant during second shift, is that right? A. Normally I wasn't.

Q. And are you telling me that if he had to transfer one employee from one machine to another that he had to call you up and ask you if he could do that? A. Correct.

Q. And he did this each and everytime somebody had to be transferred from machine to machine? A. I was called pretty often.

Q. Pardon me? A. I was called pretty often.

TRIAL EXAMINER: Mr. Tersinar, how old is your son?

THE WITNESS: He's 23.

TRIAL EXAMINER: Go ahead.

Q. (By Mr. Selby) And he did participate in training new employees, did he not? A. Yes, he had that experience.

220 Q. What were his normal duties during a typical day? A. Teach the men how to operate and so on.

Q. What else? A. That's it.

Q. You mean all day long he was just teaching — A. Well, he had to be with the men all day long.

Q. In other words, he was sort of overseeing the manner in which they were producing the gaskets? A. That they were doing their work correctly.

Q. But he wouldn't have to call you about those matters, would he, each time he went from one employee to another he wouldn't call you up and tell you he was going? A. No, he would not.

TRIAL EXAMINER: Excuse me, Mr. Selby, I don't know that we have it very clear; normally, how many men are on the afternoon shift?

THE WITNESS: I think we had 7 or 8.

* * * * *

225 Q. Did you expect the men on the second shift to take instructions from your son? A. Yes.

Q. Did you tell them to take instructions from your son? A. I don't remember telling them, no —

Q. But, you, nevertheless — A. — but, they did.

Q. — expected them to react to your son as they would a foreman, is that correct? A. Well, I don't know what you're driving at, but they took orders from him as long as I would give him the orders.

Q. But that was between you and your son? you gave him the orders and he gave the orders to the men? A. Yes, and they would take them from him.

Q. But as far as the men were concerned they took orders from your son? A. Right.

* * * * *

230 TRIAL EXAMINER: Now, what are you going to do with those lists, 14, 15 and 16?

MR. SELBY: I have offered them and I will re-offer those lists in evidence.

TRIAL EXAMINER: Any objection?

MR. WRIGHT: No.

231 TRIAL EXAMINER: All right, they are received.

(General Counsel's Exhibits 14, 15 and 16 for identification were received in evidence.)

* * * * *

MICHAEL VILENCIA

was called as a witness by and on behalf of Respondent and, after being sworn, was examined and testified as follows:

TRIAL EXAMINER: Sit down. Michael Vilencia, right?

THE WITNESS: Yes.

TRIAL EXAMINER: OK, go ahead, Mr. Wright.

DIRECT EXAMINATION

Q. (By Mr. Wright) Your full name is Michael Vilencia? A. Yes sir.

Q. How old are you? A. 51.

232 Q. Where do you live? A. I live at 30 Grant Street, Ramsey, Michigan.

Q. How long have you worked for Quality Rubber Company at Wakefield, Michigan? A. It'll be a year in July, on the 15th.

Q. What is your particular job at that place? A. I'm a mill man.

Q. How long have you been a mill man? A. Since September.

Q. Of 1967? A. Right.

Q. What were you prior to September 1967? A. A pressman.

Q. And what are your particular duties as a mill man? A. I make the rubber for the company. I mix the compound and mill the rubber for the presses.

* * * * *

233 Q. Now, what time did you come to work that morning? A. Five minutes to seven. I got up a little late that morning. I usually come at half past six or quarter to seven and change clothes.

Q. Now, when you got to the plant what did you see? A. Well, I seen the men sitting at the table, so Mr. Tersinar told me to sit down at the table.

Q. Where was this table? A. It was in the room where the girls inspect the gaskets.

* * * * *

234 Q. (By Mr. Wright) Now, who were sitting at the table? A. Well, those fellows right there (pointing).

Q. Can you name them? A. Let's see; I see Mr. Luoma, Mr. Twiggs, Mr. LeGassa, and where's that old fellow? What's that cutter's name, I forget his name.

Q. I beg your pardon?

MR. WILLIAM TERSINAR: "Monti."

THE WITNESS: Monti, he was there, and his son was there, and myself.

Q. (By Mr. Wright) Any more? A. I can't remember now.

235 Q. But those are the ones you can remember as being there? A. Yes sir.

Q. What time of the morning was that? A. That was about five to seven.

Q. Now, will you tell us what happened at that time? A. Well, Mr. Tersinar, at seven o'clock or maybe a couple of minutes after, I don't remember exactly, around that time, he pointed at the fellows, he said, "Do you want to go to work? Do you want to go? Do you want to go?" And so on,

down the line, and he come to me and I said, "I have to work, I have a family." He says, "You go ring up and go to work." So, I was going to ring my card in and these fellows got up off the table, went and got their clothes and I didn't see them after that. I don't know what happened after that. They went to their lockers then.

Q. Do you know what, if anything, else Mr. Tersinar said at that time, just exactly what did he tell the men that were there? A. Well, he told them, "If you guys want to work, you go ring them time cards in and go to work." And they didn't. I did, I rang my time card and I followed them. They went in the locker room and took their clothes and that's the last I seen of them. I was changing my clothes and they walked out of the locker. That's as far as I can tell you what happened.

Q. Now, did you hear any of them make any remarks when they were 236 walking out? A. No sir.

Q. Did you hear Mr. Tersinar say anything at that time about anybody being fired? A. No sir.

Q. Or anybody being laid off? A. No sir.

Q. Did Mr. Tersinar at that time make any statement whatsoever with reference to any union? A. None.

Q. Or what might or what might not happen if the union came into the plant? A. No sir, I didn't hear it.

Q. And how long were you at this place when, or, where Mr. Tersinar and the men were? A. Well, I said five minutes to seven to maybe one or two minutes after when they walked in the locker and got their clothes and went out. That's the last I seen of the men.

Q. And you were there until they got up from the table and left, is that it? A. I was there when they went in the locker and got their clothes and when they walked out, that's the last I seen of them. What happened after that I don't know.

Q. Did any of these men go back, to your knowledge, into this room or 237 to this table where you had been? A. Well, I don't know, I couldn't see them because I was changing clothes to go to work.

Q. And the last you saw of them they were doing what? A. They were going out of the locker.

TRIAL EXAMINER: That's three times. Even for cross examination that's a lot. Get on with it, Mr. Wright. Excuse me, it's not cross examination; but, it's still a lot.

Q. (By Mr. Wright) Did you see any of these men you have named around there later that day? A. Yes, I seen one, Mr. LeGassa.

Q. I beg your pardon? A. Mr. LeGassa.

Q. Where was he? A. He was parked outside on the highway.

Q. Oh, but I mean around the plant. A. No, not in the plant, no, not in the lot, either.

Q. You say he was out parked on the highway? A. Yes sir.

Q. Now, Mr. Vilencia, at anytime did Mr. Tersinar tell anybody not to punch in in your hearing? A. No.

Q. I beg your pardon? A. No sir. If he did, I didn't hear it. He just told me to sit at the table, that's all I know.

238 Q. Now, were there any women in the room at that time? A. I think they were all there, the ones that were employed.

Q. Would you have any idea how far they may have been from the table where you men were? A. Oh, I'd say about 25 feet.

Q. Do you know how many were there? A. I see those four girls, they were there, and Pat was there (pointing), and I think there's two more in the plant that were there.

Q. And their work was in what particular room? A. In the same room.

Q. The same room? A. Yes sir.

MR. WRIGHT: Your witness.

TRIAL EXAMINER: Cross examination, Mr. Selby.

MR. SELBY: Yes, Your Honor.

CROSS EXAMINATION

Q. (By Mr. Selby) Mr. Vilencia, was it your wife that appeared yesterday for the purpose of testifying in this hearing? Mary Vilencia? A. Yes sir.

Q. How do you know that the time you arrived at the plant was exactly 6:55? A. I looked at the time.

MR. SELBY: Thank you, no further questions.

TRIAL EXAMINER: Charging Party?

239 MR. COLLINS: No questions.

TRIAL EXAMINER: Any redirect?

MR. WRIGHT: No.

TRIAL EXAMINER: Thank you, Mr. Vilencia, you may step down.

(Witness excused.)

* * * * *

246 MR. WRIGHT: Genevieve Salo.

Whereupon,

GENEVIEVE SALO

was called as a witness by and on behalf of Respondent and, after being sworn, was examined and testified as follows:

TRIAL EXAMINER: Sit down. What is your name, please?

THE WITNESS: Genevieve Salo.

TRIAL EXAMINER: S-a-i-o?

THE WITNESS: Yes sir.

TRIAL EXAMINER: Miss or Mrs.?

THE WITNESS: Mrs.

TRIAL EXAMINER: Proceed.

DIRECT EXAMINATION

Q. (By Mr. Wright) Your name is Genevieve Salo? A. Yes.

Q. Where do you live? A. Wakefield, Michigan.

Q. Are you an employee of Quality Rubber? A. Yes, I am.

Q. When did you go to work for them? A. About July 10 I'll be a year there. I started about July 10 last year.

247

Q. What do you do at the plant? A. I'm an inspector of gaskets.
Q. Is that the same work that Mrs. Morrison does? A. Yes.
Q. Now, were you there on the morning of February 26, 1968? A. Yes,
I was.

Q. What time did you get to the plant? A. Well, I usually leave home
about 6:30 and I was there about twenty five to twenty to seven.

Q. Did you go alone or did someone go with you? A. I ride alone.

Q. And when you got to the plant, what did you do? A. Well, when
I got in the plant I walked to the time clock and punched in.

Q. Then where did you go? A. Then I looked around where we usually
sit at the picnic table and all the men were there, so then I didn't go there,
so then I went and sat the conveyor belt where I work.

Q. That was about how far from the picnic table? A. Well, about 20
feet away from the picnic table.

Q. And who were at this picnic table? A. Well, all the men were there.
The picnic table was crowded.

Q. Can you name the men that were there? A. Well, I can't say I can
248 name all of them, but I could name quite a few of them.

Q. All right, let's have it. A. Well, there was LeGassa and Twiggs, Monti,
Mattson, Luoma. That's about all I can think of right now.

Q. Is that all, or do you think there were some more? A. Well, I'm
sure there was more.

Q. Was Mr. William Tersinar there? A. Yes.

Q. Now, what was going on that you could hear? A. Well, it was about,
what I heard was about just before time for working. Well, Mr. Tersinar went
to the table where the men were and he says, "Are you men going to work?"
And the men got up, took their dinner pails and they started walking out.
Some of the men had clothes in the locker room, they were on their side of
the building, and they went and picked up their clothes, took their dinner pails
from the table and walked out the door.

Q. Did Mr. Tersinar ask them whether or not they wanted to work?

A. Yes.

Q. What did he tell them? That they could work, or that they could what? A. He said, "Well, are you men going to work?" So, that's all I heard then.

Q. Did he say anything about what they could do if they didn't want
249 to go to work? A. No, I didn't.

Q. I beg your pardon? A. I didn't hear anything to that effect.

Q. Did you hear Mr. Tersinar make any statement about a union in the plant? A. No.

Q. Or any statement that the plant would close if they had a union?

A. No.

Q. Did you hear him say anything about anybody being fired? A. No.

Q. Or laid off? A. No.

Q. Now, how long were Mr. Tersinar and the men together at the table, that you saw? A. You mean in minutes or - ?

Q. Yeah. A. I'd say a few minutes.

Q. Could you put any number on "a few minutes?" Five minutes? Ten minutes? Two minutes? A. A few will have to do.

Q. I beg your pardon? A. A few

250 Q. You wouldn't be able to put any number on it?

A. I couldn't pin-point it down to the exact time.

Q. So, after he asked them if they wanted to work, you say they got up and left? A. They picked up their pails and they walked out the door.

Q. Then what did you do? A. Well, after all the men left, then the women that were there, we went back at our table, because as a rule the men don't sit at that table, that's the table where we put our purses and lunch pails, but that morning they all happened to be at that table.

MR. WRIGHT: Your witness.

* * * * *

254 MR. SELBY: Is it possible to get this lady's time card?

MR. WRIGHT: I assume so, but not immediately.

MR. WILLIAM TERSINAR: It would be in Chicago.

MR. SELBY: Do you have any records -

TRIAL EXAMINER: Mr. Selby, did you ever hear the word "overkill?"

MR. SELBY: Sir?

TRIAL EXAMINER: Did you ever hear the word "overkill?"

MR. SELBY: Yes, Your Honor, I have.

I have no further questions.

TRIAL EXAMINER: Go ahead.

* * * * *

256 TRIAL EXAMINER: The hearing will be in order. I have a rough sketch on a piece of yellow paper I found on the bench. Was this prepared by you or your client, Mr. Wright?

MR. WRIGHT: I think it was prepared by Mr. Arentz and Mr. William Tersinar

TRIAL EXAMINER: Does everybody consent that it be marked in evidence? I'll make it my own Exhibit, if you wish, for what it is, a rough 257 sketch. In other words, have you any information that the different rooms are located otherwise than they're indicated here?

MR. SELBY: No, Your Honor. The only possible reservation I have with respect to the document is it will not show the exact relation is space between one point and another.

TRIAL EXAMINER: You mean dimension rather than relation?

* * * * *

MR. COLLINS: If it please the Court, the position that the picnic table 258 is situated in there is questioned. Otherwise, whether it's in the approximate location in relation to the door. It's our position that it was farther away.

TRIAL EXAMINER: With all those reservations, and I'll note those, is there any objection to my offering it as Trial Examiner's Exhibit Number 1, gentlemen?

MR. SELBY: Not with those reservations, no, Your Honor.

TRIAL EXAMINER: All right. It will be Trial Examiner's Exhibit Number 1. The Reporter will mark it.

(The above-mentioned document was marked for identification as Trial Examiner's Exhibit 1.)

(Trial Examiner's Exhibit Number 1 for identification was received in evidence.)

* * * * *

FLORENCE BEBER

was called as a witness by and on behalf of Respondent and, after being sworn, was examined and testified as follows:

TRIAL EXAMINER: Sit down. What is your full name, please?

259 THE WITNESS: Florence Beber, Mrs. Florence Beber.

TRIAL EXAMINER: Proceed, Mr. Wright.

DIRECT EXAMINATION

Q. (By Mr. Wright) Your name is Florence Beber? A. Yes sir.

Q. Where do you live, Mrs. Beber? A. 203 Hancock Street in Wakefield.

Q. And are you an employee of Quality Rubber Manufacturing Company?

A. Yes, I am.

Q. How long have you been such an employee? A. Since August 7, 1967.

Q. And what is your job there? A. Inspector.

Q. And what do you inspect? A. Gaskets.

Q. Were you an employee on the 26th of February, 1968? A. Yes sir.

Q. At what time did you get to the plant? A. Well, I assume it was between a quarter to and ten to seven.

Q. Did you come alone or with somebody? A. I came alone.

260 Q. Did you come by car? A. Yes, my husband drove me, but he went straight to work and dropped me off.

Q. How far is it from your home to the plant? A. Oh, I'd say about ten blocks.

Q. And you left home about when? A. We left home about twenty to seven, but then we go up to the Wakefield News and turn on the machine at the Wakefield News before we go down to the plant. We do that every morning.

Q. And your husband is connected with the Wakefield News? A. No, no sir, he works at the school, the Wakefield Township School.

Q. I see. Now, when you got to the plant and after you got through the main door, I'm assuming that you went through the west door? A. Yes.

Q. Then where did you go? A. I went to the cloak room to take off my jacket.

Q. And where is that? A. That's to the right as you come in the door.

Q. Did you meet anybody in the cloak room? A. No sir.

Q. What did you do in the cloak room? A. I took off my jacket and put on my shoes, changed my shoes.

261 Q. Was that the only thing you change when you go to work? A. Yes sir.

Q. Then where did you go? A. Then I went into the plant proper.

Q. Now, certain reference has been made many times to a certain picnic table. A. Yes sir.

Q. Was there such a picnic table in the room when you went in there on the 26th of February? A. Yes, there was.

Q. And what kind of a table was it? A. It's a green, wooden picnic table with benches, you know, attached to the table.

Q. Where was it located? Where was it standing? A. Well, you can see it as you come in the door, but it's a little to the right.

Q. Now, there is on the table of the Examiner a rough sketch of the scene of the floor. Will you take a look at that and tell us whether or not, in your opinion, the place marked "picnic table" is in the approximate location at which you saw it on the morning of the 22d of — the 26th of February of this year? A. Yes sir, I'm pretty sure that's about where it was.

Q. Now, you got into the room, you say, about when? A. Well, between a quarter to and ten to.

MR. SELBY: What room are we talking about?

262 THE WITNESS: The plant proper.

Q. (By Mr. Wright) The main room? A. Yes.

Q. Where the picnic table is? A. Yes, where I inspect gaskets.

Q. And that also is the room where you work, you say? A. Yes.

Q. Now, what did you see when you got in there that morning? A. Well, as I walked in Mary and Gena were already there.

Q. Marian who? A. Mary Anderson and Gena Salo, they were already there.

Q. OK. A. And Gena waved to me and she says, "Come over here." I saw the men sitting at the table, so I went and punched in first and then I went over and stood with Gena and Mary.

Q. And where did you stand? A. By the conveyor belt.

Q. Now, is the conveyor belt indicated on that sketch that you just looked at? A. Yes.

Q. And approximately how far is it from the picnic table to the conveyor belts? A. Oh, about 15 feet.

263 Q. You were standing by the conveyor belt? A. Yes.

Q. And where was Mary Anderson? A. They were all at the belt, Mary and Gena, and I, at that time.

Q. Did you see Mr. William Tersinar at that time? A. Yes.

Q. Where was he? A. He was over by the picnic table, by the men.

Q. Was he standing or walking or what was he doing? A. Just standing. I didn't see him moving.

Q. I beg your pardon? A. I didn't see him moving.

Q. What was going on over there that you could hear? A. Well, at the time I had taken my purse and lunch bucket with me to the conveyor belts and when it was time to go to work I went back to the table to put down my lunch box and purse. I heard Mr. Tersinar ask the men if they wanted

to go to work. I don't remember if they replied anything or not, but I know that they picked up their lunch buckets and they started out. Then the others went to the locker room to get their clothes or whatever they had there, I don't know. I sat down my purse and my lunch bucket and one of the gentlemen picked up his lunch pail off the end of the bench that I was at and he said, "You can go to work if you want to," he says, "but I'm going home."

264 Q. Now, did you hear Mr. Tersinar say anything else? A. No sir.
Q. He just simply asked them if they wanted to go to work? A. Yes.
Q. Did you hear Mr. Tersinar say anything about a union in the plant?
A. No sir.
Q. Or that the place would close if they had a union? A. No sir.
Q. Or any remark about union whatever? A. No sir.
Q. You say you've been working in the plant since August 7, 1967?
A. Yes sir.
Q. Has Mr. Tersinar ever said anything to you with reference to a union in any way? A. No sir.
Q. Or to anyone else that you overheard? A. No sir.
Q. And you say when you heard what you've testified to you were standing at the end of the picnic table? A. Yes.
Q. Now, at that time, how many men were there around that table?
A. Oh, four or five, I guess.

265 Q. Do you know who they were, any of them? A. Well, there was Mr. Luoma and I think possibly Mr. LeGassa and Mr. Twiggs were already on their way out and Mr. Monti.
Q. Do you remember anybody else? A. No sir, I don't.
Q. And do you remember who was the one who made this remark to you that you could work if you wanted to? A. I think it was Mr. Luoma.
Q. I see. Following that, what did you do? A. I went to the conveyor belt.
Q. Now, the conveyor belt is about how far from the table? A. About 15 feet, I think.

Q. Do you know whether or not the conveyor belt was running at the time you've been mentioning? A. No sir, it wasn't.

Q. It was not? A. No.

Q. How do you know that? A. Because, we weren't working.

Q. When it is running, how much noise does it make? A. The belt? The belt doesn't make too much noise.

Q. What do you mean by "too much?" A. Well, it's pretty quiet, I guess, the belts themselves.

266 Q. Did they ever bother you? A. No sir.

Q. And all this was about what time on the morning of the 26th?

A. Well, it was seven o'clock or so.

Q. Before or after? A. Well, I don't know.

TRIAL EXAMINER: Excuse me. I mean -

THE WITNESS: We go to work at seven, so -

TRIAL EXAMINER: - that's what I was going to ask you, your regular starting time is seven?

THE WITNESS: Yes.

TRIAL EXAMINER: All right, go ahead.

Q. (By Mr. Wright) This happened before or after the starting time, when you heard the men - ? A. That was a little before, it must have been just a few minutes before, because I went to set down my - it must have been about seven o'clock - I set down my pail and my purse.

Q. About seven o'clock or a few minutes before, would that be reasonable?

A. Yes.

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267

CROSS EXAMINATION

Q. (By Mr. Selby) Mrs. - A. Beber.

* * * * *

Q. (By Mr. Selby) Let me suggest something to you, Mrs. Beber, and maybe you can respond to the question now. We're talking about February 26, not recently. A. Yes.

Q. Are the tumblers an item in which the gaskets are placed and then they are frozen so that any rough edges can be tumbled off of the gaskets?

A. Yes sir.

268 Q. Is that what you understand them to be? A. Yes.

Q. Now, do you recall whether or not those tumblers were going at the time? A. No, I don't.

Q. They could have been, but you just don't remember? A. They could have been, but I don't really know.

Q. And they're located against the wall, behind you at the conveyor belt, is that right? A. Yes, uhhuh.

Q. When they are going, do they make much noise? A. Yes, they do.

Q. George Grant operates a tumbler, is that right? A. Yes.

Q. What would you estimate the distance of this room to be from where you're sitting at one wall to the opposite wall? A. Twenty five feet.

Q. And you say that you were closer than 25 feet from the conveyor belt to the picnic table? Closer than the distance of this room? A. Let's see. Possibly. I mean, probably, I'd say, up to that pole or so. I mean, I don't really know.

Q. Indicating about five feet less than the length of the room. A. Yes.

* * * * *

273 MR. WRIGHT: Mary Anderson.

Whereupon,

MARY ANDERSON

was called as a witness by and on behalf of Respondent and, after being sworn, was examined and testified as follows:

TRIAL EXAMINER: Sit down. What's your full name, please?

THE WITNESS: Mrs. Mary Anderson.

TRIAL EXAMINER: Proceed.

DIRECT EXAMINATION

Q. (By Mr. Wright) Mrs. Mary Anderson is your full name? A. That's right.

Q. Where do you live, Mrs. Anderson? A. 110 Lake Shore Drive, Wakefield.

Q. Lake Shore Drive is one road west of Sunday Lake and immediately north of 2, is that correct? A. That's right.

Q. Are you an employee of the Quality Rubber Manufacturing Company?

A. Yes, I am.

Q. When did you become such an employee? A. October 14, 1967.

Q. What is your job? A. Inspecting gaskets.

274 Q. Has that been your job as long as you've been there? A. Yes sir.

Q. Are you still employed? A. Yes sir.

Q. Now, were you employed on the 26th of February, 1968? A. I was.

Q. What time did you get to work that morning? A. Oh, it probably was quarter to, ten to seven.

Q. And did you drive, or how did you get there? A. I got a ride.

Q. From whom? A. My husband.

Q. And your house is about how many blocks from the factory? A. Oh, I'd say 6 or 7.

Q. So, your husband took you there and you think you arrived at the plant about when? A. Quarter to, ten to.

Q. Did any other of the women employees go with you? A. No, I was alone.

Q. Now, when you got to the plant, what did you do? A. The same, usual procedure; I came in, went to the cloak room, took my clothes off, changed shoes and went right on the job to work.

275 Q. You say you take off your clothes? A. Your jacket.

Q. Do you make a complete change? A. No, your jacket. You come in your regular work clothes and you take off your jacket and switch shoes.

Q. Which takes how long? A. Just a few minutes, two or three minutes.

Q. Now, after you'd done that where did you go? A. I went to the room where we work, the main room.

Q. Now, you've heard some reference to a picnic table; is it the room in which that picnic table is located? A. That's right.

Q. Will you take a look at this yellow sketch on the desk and tell us if the picnic table shown on that is in the approximate location in which it was on the 26th of February of this year? A. That's right.

Q. Now, when you got into the room, where did you go? That is, this large room? A. Well, I started to walk in. Our regular procedure is to go by the picnic table. All the men were there, so I turned around to where we punch the clock. I sat — I walked over then to the conveyor belt and sat there as long as the picnic table was occupied.

276 Q. The picnic table was about how far from the conveyor belt? A. Oh, I'd say 15 or 20 feet.

Q. Were the conveyors running at that time? A. No, not the conveyor belts.

Q. How about the tumblers? A. I don't remember.

Q. Was there any distracting noise in the room at that time? A. No sir.

Q. In the next few minutes after you got over by the conveyors, did you stay there or did you move to some other place? A. No, I stayed there, Mrs. Salo and I were there.

Q. Was there a Mrs. Beber? A. Yes, she sat with us, too.

Q. Now, what was going on over at the picnic table that you heard?

A. That I heard?

Q. Yes. A. It wasn't until I walked over to get my — to put my lunch down that I could hear Mr. Tersinar ask the men if they were going to work and nobody seemed to answer. The next thing I knew, they walked out. They all picked up their lunches and walked out.

Q. How did you happen to move over to the picnic table? A. Well,
277 as we were going — see, you punch your time card in and then we took our

stuff right to the conveyor belt where usually it's placed right on the table. So, as the men had left we had placed our stuff on the picnic table.

Q. So, you came back to the picnic table to pick up your, whatever it was you had there? A. That's right.

Q. About how far were you from the picnic table when you heard what Mr. Tersinar said? A. Not too far. I'm not very good at distance, but I'd say from where he is (pointing) to where Your Honor is.

Q. I see, and that would be what? I'd say about ten feet. A. Five feet, ten feet, I'm not good at judging.

TRIAL EXAMINER: Next question.

MR. WRIGHT: Can we make a guess on the distance?

TRIAL EXAMINER: Go ahead, make your guess.

MR. WRIGHT: Well, Mr. Selby, would you say that that is approximately ten feet from the Court to the Reporter?

MR. SELBY: I don't know. I couldn't estimate it.

MR. WRIGHT: From where the Examiner is sitting to where the Reporter is sitting.

MR. SELBY: I'll stipulate it's ten feet.

TRIAL EXAMINER: It's close to ten.

Q. (By Mr. Wright) Where was Mr. Tersinar standing? A. He was by the table where all the men were seated.

278 Q. Was he standing or walking around? A. No, he was standing.

Q. Did you hear Mr. Tersinar say anything else that morning? A. I did not.

Q. Was there any reference to a union in any way, shape or manner?

A. No sir.

Q. You've been working there since the 14th of October, 1967?

A. That is right.

Q. Has Mr. Tersinar or any other member of management ever said anything to you about a union, for, against, or anything else, during that time?

A. Never a union was mentioned.

Q. Or have you heard Mr. Tersinar or anyone else connected with management make any such remarks to any other employee of the place?

A. I have never heard it, sir.

Q. You never heard it mentioned at all? A. I never heard it at all.

Q. Now, when you walked over there in the first place did you put your material on the table? A. No. When I first walked in I went straight to the conveyor belts.

Q. And then what were you going to do when you came back to the
279 table? A. I was going to put my stuff from the conveyor belt onto the picnic table after the men were supposed to go to work at seven. That's the time we start.

Q. I see. The picnic table was the place where you customarily parked that stuff? A. Yes, uh huh, all the girls do.

MR. WRIGHT: Your witness.

TRIAL EXAMINER: Cross examination?

MR. SELBY: Yes, Your Honor.

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284

WILLIAM TERSINAR

was called as a witness by and on behalf of Respondent and, being already sworn, was examined and testified as follows:

TRIAL EXAMINER: You have been sworn in this proceeding and you are still under oath.

Proceed, Mr. Wright.

DIRECT EXAMINATION

Q. (By Mr. Wright) Now, you've already been sworn in this case, Mr. Tersinar, and your name is on the record. We don't need many preliminaries.

TRIAL EXAMINER: Do you spell your name T-e-r-s-i-n-a-r?

THE WITNESS: Correct.

TRIAL EXAMINER: Thank you. Proceed, Mr. Wright.

MR. WRIGHT: Just a minute, Your Honor.

285 Q. (By Mr. Wright) Mr. Tersinar, what is your connection with Quality Rubber?

TRIAL EXAMINER: We have that. He's plant superintendent. Do you want to go any further into it?

Q. (By Mr. Wright) How long have you been plant superintendent at Wakefield? A. Fourteen years.

Q. At Wakefield? A. No, two years at Wakefield, ever since it opened.

Q. It opened here on what date? A. July 1, I'm pretty sure.

TRIAL EXAMINER: What year?

THE WITNESS: Of 1967.

TRIAL EXAMINER: July 1, 1967. That's less than a year.

THE WITNESS: Yes.

TRIAL EXAMINER: All right.

Q. (By Mr. Wright) Prior to that time you worked for Quality Rubber where? A. At Chicago's plant, 334 North Bell Street.

Q. And what was your job down in Chicago? A. Plant manager, superintendent.

Q. How long were you plant manager or superintendent in Chicago?

A. For 14 years.

286 Q. So, you have been a plant manager or superintendent for Quality Rubber as of now approximately 15 years? A. Right.

Q. Now, so far as Wakefield is concerned, what are your duties?

A. I'm plant manager.

Q. All right. What are some of the things that are covered by that title? What do you do? A. Well, I've got to see that everything is carried out correctly and instruct the people to the area of the right procedures and so on.

Q. What about hiring and firing? A. The hiring and firing is my responsibility.

Q. What about the purchase of supplies and materials? A. That's in Mr. Arentz's department, he does all the purchasing.

Q. And what about the shipping of the finished product? A. He also sees that the stuff is shipped out.

Q. On his own or under you? A. On his own, practically most of the time, yes.

Q. So your duties are related, then, I take it, to the operation of what you might call the mechanical part of the plant? A. Correct.

Q. And are those the same duties you had when you were in Chicago?
287 A. Yes.

Q. Now, do you operate under orders that come from Chicago or are you on your own? A. Well, our orders come from Mr. Busk. He's here today and in the summer he's here at the Wisconsin place and in the winter-time he's in Florida.

TRIAL EXAMINER: What's his official title?

THE WITNESS: He's the owner, Mr. Busk.

Q. (By Mr. Wright) Does he have a title? Is he the President? A. He's the President.

TRIAL EXAMINER: I note that the Respondent's name is Quality Rubber Manufacturing Company, Inc. I assume it's a corporation?

MR. WRIGHT: Yes, it is.

TRIAL EXAMINER: Go ahead.

Q. (By Mr. Wright) And, as I said before, are you on your own or subject to orders from Chicago? A. I don't take orders from Chicago.

Q. You take them from whom? A. Mr. Busk.

Q. I see. And who determines the policy on which this plant is operated?

A. Mr. Busk.

288 Q. Now, does your son John work for the company? A. Yes, he does.

Q. How old is he? A. He's 23, going to be 24.

TRIAL EXAMINER: When?

THE WITNESS: I think it's April 10.

TRIAL EXAMINER: You mean he was just 23 last April? We're in June now.

THE WITNESS: Can I ask him?

TRIAL EXAMINER: You don't remember off hand?

THE WITNESS: No, I don't.

TRIAL EXAMINER: Ask him.

THE WITNESS: Are you 24?

MR. JOHN TERSINAR: No, I'm 23.

TRIAL EXAMINER: Just passed 23. All right.

Q. (By Mr. Wright) And how long has he worked for Quality Rubber in Wakefield? A. Well, he started after he finished high school. He's with the company for years.

Q. Not all of it in Wakefield? A. No, he's been trained in Chicago.

Q. And you say when he finished high school; has he been working since he got out of high school? A. Yes.

Q. Did he go to college? A. No, he did not.

289 Q. Now, what did he do in Chicago? A. He was a pressman. He was an all-around man. I was teaching him to take my place later on.

Q. And what has he been doing in Wakefield? A. Practically the same thing, under my instructions of carrying the orders out to different men, and so on.

Q. How much authority does he have? A. He has no authority on his own, unless it comes from me. He had no authority to fire or hire.

Q. Does he have any authority to effectively recommend either hiring or firing? A. No, he doesn't.

Q. And at the times we've been concerned about in this hearing, what was his specific assignment at the Wakefield plant? A. Well, he wasn't assigned to anything as far as I know. We have put him as a teacher of the employees, which we have there.

Q. Well, in the month of February, 1968, what was he doing? A. Well, he was taking orders from me running second shift.

Q. Is that the whole plant or merely a department of it? A. In the department.

Q. In what department. A. The press department.

290 Q. And what were his duties in connection with operating the night shift, or the afternoon shift as you call it, in the press department? A. Well, he had to see that everything was running to the orders I left him correctly and that everybody were on their job.

Q. Did you leave the orders in writing or verbally? A. No, just verbally.

Q. Now, the press department is where the ovens are? A. The presses, yes, where they are cured.

Q. In other words, you cure the various parts? A. That's right, it's under high pressure and steam.

TRIAL EXAMINER: Excuse me. Do you keep those things hot 24 hours?

THE WITNESS: No, just the time we're working. The boiler is put on in the morning.

TRIAL EXAMINER: Well, what are the hours of the day shift?

THE WITNESS: From seven to five.

TRIAL EXAMINER: And what are the hours of the afternoon shift?

THE WITNESS: We have none now, but —

TRIAL EXAMINER: Well, what was it then?

THE WITNESS: From five to three in the morning.

TRIAL EXAMINER: What happened between three and seven in the morning?

291 THE WITNESS: It's shut down.

TRIAL EXAMINER: Cooling off the ovens, and everything?

THE WITNESS: Yes.

TRIAL EXAMINER: All right. Go ahead, Mr. Wright.

Q. (By Mr. Wright) You say you did all the hiring. Now, do you remember a Donald Pikka coming to your office shortly before New Year's of 1968 to apply for a job? A. Well, I remember him coming in, but the date I wouldn't know.

Q. Well, he testified here yesterday that he went to work for the company on the second of January, 1968. A. Uh huh.

Q. Now, do you remember his coming in and applying for a job?

A. Yes, I do. I hired him.

Q. But you don't exactly or actually remember the date? A. No, I don't.

TRIAL EXAMINER: Do you remember the incident?

THE WITNESS: No, I've hired so many I just don't remember the dates and —

TRIAL EXAMINER: Proceed.

Q. (By Mr. Wright) Now, at the time, do you remember the time that Pikka came in and asked you for a job? Any of the conversation that you may have had with him?

TRIAL EXAMINER: He just said he doesn't remember.

292 Q. (By Mr. Wright) Specifically, did you tell him you didn't want any union in the plant?

MR. SELBY: Objection.

THE WITNESS: No, I did not.

TRIAL EXAMINER: Well, I don't know if it's really objectionable. It's leading. But, in the light of his statement that he has no recollection, it's really futile to ask him the canned questions unless they're leading. I will give it very little weight for that reason. You're just tending to impeach him. You suit yourself, ask any question you want, and I'll rule on it. As a matter of fact, I'm going to overrule this objection. But, I'm trying to keep this case moving at a reasonable pace. Go ahead, Mr. Wright.

Q. (By Mr. Wright) Now, regardless of this Mr. Pikka, have you at any time told anybody in the plant or outside that you didn't want a union at Wakefield? A. No, I did not.

Q. Now, did you ever hear that a certain Curly Johnson came to your son some time in February of 1968 with a request for a ten-minute break in the, what do you call it, the press room? A. No, I did not.

Q. Did he come to you with any such — A. No, he did not.

293 Q. Do you know whether or not they had any breaks, ten minutes or otherwise, in the press room in the month of February 1968? A. Not to my knowledge. They shouldn't have had no break time, they have enough time —

TRIAL EXAMINER: No, no, you have finished the answer. Not to your knowledge. Now, go ahead, next question.

Q. (By Mr. Wright) Now, did you ever employ a man by the name of "Sibley?" A. Yes, I did.

Q. Do you remember when you employed him? A. He was employed in January, if I ain't mistaken, and he was there only three weeks with us.

Q. Now, to what job was he assigned? A. He was assigned as a pressman.

Q. I beg your pardon? A. Pressman.

Q. Had he had any previous experience on the job? A. No, he did not.

Q. Who undertook to train him? A. My son.

Q. Now, what sort of a workman did Sibley turn out to be? A. Well, I thought he was going to make a pretty good man there the first week, but then he started giving us trouble, throwing metal around, rubber, couldn't keep him on his job. At least my son called me up half a dozen times and I told 294 my son to warn him and tell him that there shouldn't be no horseplay and so on in the place and he warned him. But, he kept on doing it, so —

Q. Now, wait a minute. Your son contacted you in what way? A. He told me that he couldn't keep —

Q. No, I mean, how did he get in touch with you? A. Over the telephone.

Q. Now, after he talked to you over the telephone, did you go out into the plant, or — ? A. No, I just give him instructions to warn him on the incident that happened, that if he would continue in horseplay that we would have to let him go.

Q. Now, when did that start, if you remember? A. Well, that was the week before he was let go.

Q. How many times had you been in the plant during the three or four weeks that Sibley was on the payroll while Sibley was at work? A. Well, I see him come in every evening and I was around for half an hour or so while they were operating. Then I would usually come back, oh, maybe once a week after supper and see how things were going.

Q. Now, it appears that Sibley's employment was terminated on the 21st of February, 1968. Who terminated it? A. I discharged him.

295 Q. Now, tell us about it, tell us what happened? A. Well, my son called me up and said that Sibley, he just can't keep him on the job, he's throwing metal around, rubber; I told my son, "Well, I'll be down and talk to him."

Q. And about what time of the day was that? A. Well, I think it was right around seven o'clock, I ain't sure of the exact time.

Q. And you did what? A. I told my son to send him in the office, which is in the press room, and Sibley come in and as he came in he says, "You're going to fire me?" And I says, "Well, let's don't put it as 'fire,' we just can't use you if you're going to continue this horseplay." At that time he turned right around and went back out to the press room. He started waving and I was still in the office and he was waving, like this (indicating), and I heard him say, "I got fired, let's get out of here." Well, I stood there at the office, which is 30 or 40 feet from the presses, and I seen Curly Johnson, that's Herbert Johnson, and Pikka, walking with him, and as I approached them I told them to "punch out, if you boys are going out, and don't come back." That was Pikka and Herbert Johnson.

Q. Now, had you had any previous contact with either Johnson or Pikka 296 that night? A. No. The only thing I've told them was to punch out if they are going to walk out with him, and not to come back.

Q. No, but you didn't quite get the question, I'm afraid.

Had you had any previous, before the night of the 21st, had you had anything previous with reference to their work or lack of it or however you want to put it with Pikka or Johnson? A. No, I did not.

Q. Did you have any dissatisfaction with their work? A. No, I thought their work was satisfactory.

Q. Did you ever suggest a layoff or a discharge to them? A. No, I did not.

Q. And did you do anything that night to discharge them? A. No, I did not talk to none but Sibley that night, except when they were going out.

Q. And that was if they left they didn't need to come back? A. Yes sir.

* * * * *

Q. All right, explain just how these presses operate. A. Well, they're a hydraulic pump that puts the pressure up and they have platinums that have steam in them, that carriers the steam through your press that cures the item. The pressure squeezes it out and the steam cures the stuff and that is left in this press, set by the clock, an eight-minute cure. The molds are being changed in a minute-and-a-half providing how fast the man wants to work.

TRIAL EXAMINER: What do you mean "the molds are changed?" The 298 man takes out the molded rubber and puts fresh liquid rubber in?

THE WITNESS: That's right, you take the cured stuff out and put the raw material in.

TRIAL EXAMINER: What is that? A sheet?

THE WITNESS: No, it's little pebbles where you have —

TRIAL EXAMINER: Little pellets?

THE WITNESS: Well, yes, pellets.

TRIAL EXAMINER: All right. What do they have those in, a box or a bag, or what?

THE WITNESS: It's a tubed item. It's about an inch in diameter.

TRIAL EXAMINER: I see. All right.

THE WITNESS: And that is put in the mold, shoved in. You push the button and it goes up while he's taking out the other molds and then it comes down. He has three molds to operate, three presses. Now, the man starts at the end, and as that press is up, that clock is set for eight minutes. Then he's got two more to change, which takes him another three minutes to get

them up. That's his complete round. Then he sits there for five minutes if the man is fast. This has had time study men on it and been clocked. The man is actually working forty minutes out of an hour and twenty minutes is for himself.

TRIAL EXAMINER: Next question.

299 Q. (By Mr. Wright) Now, Mr. Tersinar, did you ever have a man working for you by the name of Ralph Olson? A. Yes, I did.

Q. When was he hired? A. Well, I don't know the exact date. It's stated on there.

TRIAL EXAMINER: Do you know approximately when?

THE WITNESS: He worked with us for a few months.

TRIAL EXAMINER: When?

THE WITNESS: I'd say he was hired in August sometime.

Q. (By Mr. Wright) '67? A. Yes.

Q. And about how long did he work? A. Well, he worked for a couple of months and I had to let him go for the reason he didn't like to take orders or his work wasn't too satisfactory. I had to let him go. But, he came back a couple of times, talked to me and says that he's going to try to do better, so I've took him back.

Q. Do you remember when that was? A. I've taken him back about two weeks later.

Q. How long did he stay then? A. He stayed until the last part of December, which was right around Christmas, when he left of his own accord, said he had another job at some other place.

TRIAL EXAMINER: What shift was he on?

300 THE WITNESS: He was on second shift.

TRIAL EXAMINER: Each time that he was working for you?

THE WITNESS: Yes.

TRIAL EXAMINER: Go ahead.

Q. (By Mr. Wright) And what did he do? A. He was a pressman.

Q. Did he give you any indication of what his job was after he left, what he was leaving for? A. He said something about forestry.

Q. Where had he worked before he came to work for Quality? A. He also said he worked at the forestry before he came to Quality.

Q. In what capacity did he work for you? A. Pressman.

Q. Did you ever — do you know Nels Luoma? A. Yes, I do.

Q. How long have you known him? A. Well, ever since he worked at the place. He was one of the first men that we hired there, practically one of the first men.

Q. Did you ever tell Nels Luoma or any other person, for that matter, that Olson was a union organizer? A. No, I did not.

Q. And for that reason you didn't want him around? A. No, I did not.

301 Q. Did you have any knowledge whatever of the membership or non-membership in the union of Olson? A. No, I did not.

Q. At anytime.

Now, Mr. Tersinar, on the 21st of February, as I understand your testimony, you terminated Selby —

MR. SELBY: "Sibley." I'm Selby.

MR. WRIGHT: You're Selby, but I said — oh, Sibley, not Selby, yes, Sibley —

Q. (By Mr. Wright) — and Pikka and Johnson? A. Yes, right.

Q. All right. Now, had it been brought to your attention in any way at that time that there was any agitation or discussion of union organization in your plant? A. No, nobody talked about any union around there. I never heard any talk about the union, no discussion, and I thought that —

TRIAL EXAMINER: That's all, next question. That's the end of the answer.

Q. (By Mr. Wright) So you hadn't heard of any. Had you made any — did you have any reason to investigate and see whether or not there might be? A. No, I didn't care whether a union got in there or not.

TRIAL EXAMINER: The answer is "no." Everything else can go out.

302 Q. (By Mr. Wright) Did you have any objection to a union coming it?

A. No.

Q. You say you worked down in Chicago? A. We have a union there.

Q. Well, I didn't ask you that. How long has the parent company had a union in Chicago? A. Well, I think it's 12 or more years that we have a union there.

Q. Do you know which particular union it is?

TRIAL EXAMINER: What's the difference? Does it make any difference? Do you want it? Do you know the name of the union down there?

THE WITNESS: The Leatherworkers.

Q. (By Mr. Wright) Not that it makes too much difference.

Has there been a strike down there? A. No, we haven't.

Q. During the time that you were there, what would you have to say about the relations between the management and the — A. I —

TRIAL EXAMINER: No, no, no —

MR. SELBY: Objection, for the record, anyway.

TRIAL EXAMINER: I haven't any conception of how any situation in Chicago affects this case.

MR. WRIGHT: OK, then we'll just let it go.

303 Q. (By Mr. Wright) Now, did you have an incident in the plant on the morning of the 26th of February? A. Yes, I did.

Q. All right. Will you tell us what happened? A. The morning of the 26th of February, I leave the house about ten after six and it don't take me more than a couple of minutes to get there. As I come in I change shoes there so I don't go back in the house with dirty shoes. I change my shoes and looks around and here was Mr. Luoma and Mr. Mattson coming in. I thought they were pretty early, because it was before — oh, I suppose it was around a quarter after six, and as they came in I said, "Don't punch in too early, boys." I went back, because I have boilers to put on, compressors, and so on, and it takes me some time to get that all in. As I was walking

around I seen the boys start sitting around the table there and walking around there.

Q. Just a minute. Are you referring to this picnic table that's on this sketch? A. Yes, they were all sitting around it, walking around, somewhere nearby. Some were in the locker, some were still coming in.

Q. All right. A. And just about before seven o'clock I come up to the men and I see they wasn't going to work, so I says, "Aren't you men going 304 to work?" I heard somebody say "Nope." So, I walked towards them and I pointed out to Mr. Luoma and he says, "No," and I pointed out to Mattson, "Are you going to work?" "No." I pointed out to Twiggs and he said, "No." About that time Mike Vilencia got up and he says, "Well, I got to work, I got a family to support." And I told him to punch in and get going, get on his job. About that time it was ready to go to work. I says, "You three boys that don't want to work, out." So, they went out and took the rest of them that was around there with them. And that's exactly how that incident happened that morning.

TRIAL EXAMINER: Excuse me. With the exception - well, were these men around the table all the pressmen in the plant?

THE WITNESS: Yes, all were pressmen.

TRIAL EXAMINER: I mean, was that all of the pressmen there are in the plant?

THE WITNESS: Yes.

TRIAL EXAMINER: Are there any other pressmen?

THE WITNESS: No, that was all of them.

TRIAL EXAMINER: Thank you. I was confused about that. Go ahead, Mr. Wright.

Q. (By Mr. Wright) Now, did you tell any of the men they were fired?

A. No, I did not.

305 Q. Did you tell them they could go to work? A. I asked them to go to work. They refused, they said no. There was only three men that I asked.

TRIAL EXAMINER: Next question.

Q. (By Mr. Wright) How many were there altogether? A. Well, LeGassa was sitting there, so was Vilencia, he got up and went to work, and that was about all that was sitting down. About five.

Q. Sitting or standing, how many were there altogether? A. Well, standing there was Monti and his son — well, I couldn't say exactly. There was some in the locker, but they was a few men that was standing around there.

Q. All pressmen? A. All pressmen. One mill man.

TRIAL EXAMINER: Who was the mill man?

THE WITNESS: That was Westeen.

TRIAL EXAMINER: OK.

Q. (By Mr. Wright) Now, did anybody of that number give you any explanation or reason why they were not going to work? A. No, nobody said nothing except when I asked them if they were going to go to work. Then they said no. I didn't ask no man why, I figured it was the reason of the incident I had with Sibley.

Q. But nobody, either you or anybody else, gave any reason for their refusing to work? A. No reason whatsoever.

306 Q. They didn't say they were on a strike of any kind? A. No sir.

Q. They didn't go outside and set up a picket line? A. No.

Q. Did they make any reference to belonging to a union, that they belonged to a union? A. No sir.

Q. Either they or you? A. Nobody said "union" at all.

Q. Now, at that time had the union given you any notice that it claimed to represent the employees, on the morning of the 26th of February?

A. The 26th of February? After about eleven o'clock I had a call from Mr. Soltis and he asked me to consider and take the men back. He says, "They claim you fired them." I says, "I didn't fire nobody, they have walked out, refused to go to work." Again, after eleven o'clock, I had another call from Mr. Soltis asking me to take the men back. I refused and I think it was again on the 27th that he called me, I'm pretty sure I had three calls from Mr. Soltis.

Q. Now, in the first telephone call you had from Mr. Soltis on the 26th, did he say anything about the union claiming to represent a majority of your employees? A. Yes, he did, he said he had the majority of the people employed by Quality Rubber Company and he was the representative.

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Q. In the first telephone conversation? A. Yes, that's how he started it off.

TRIAL EXAMINER: Anymore questions?

MR. WRIGHT: Just a moment.

TRIAL EXAMINER: All right.

Q. (By Mr. Wright) Now, after the men had left that morning, did any of them return? A. No, no, they didn't.

Q. They didn't come back after their checks or anything of that kind? A. Oh, yes; that was on —

Q. That was on a Monday? A. — Monday. They didn't return Monday, but I think it was Thursday or Friday of that week. I told them that I have sent their checks out through the mail.

Q. Was there any discussion of any kind when they came in after their

checks from any individual? A. No discussion.

Q. You simply told them they'd already been mailed? A. That's right.

Q. Now, following the incident of the 21st of February, did Pikka come back for his check? A. Yes, he did, Pikka and Curly Johnson, Herbert Johnson.

Q. When did they come back for their check? A. They came back the very, very next day.

308 Q. And was there any discussion between you and Pikka when they came back to get their checks? A. There was no discussion.

Q. Did Pikka ask you about why Sibley was fired? A. No.

Q. Were there any remarks of any kind at all at that time about a union or a lack of it? A. I didn't hear nobody —

Q. I mean between you and Pikka and Johnson. A. No, no.

Q. Now, how many men of the number of men who left on the 26th, was it 7, 8, 9, 6, what was the total number that left? A. I think it was 7 on the morning of the 26th and 3 on the morning of the 21st.

Q. So that would be 10 altogether? A. Yes.

Q. Did you replace those men? A. No, I did not.

Q. I beg your pardon? A. No, I did not.

Q. Not up to the present time? A. (Witness shakes head.)

Q. Now, I think maybe I've been over this, but I'm not sure. You got to the plant and on the morning of the 26th at when, did you say?

309 TRIAL EXAMINER: You have been over this.

THE WITNESS: About 15 minutes after six.

Q. (By Mr. Wright) All right. Now, when did this meeting you had with the men take place? I think that's the thing I didn't cover.

A. Well, that took place right around seven o'clock. It was time to go to work, I seen the men sitting down there and that's when I went up to ask them whether they were going to go to work or not.

Q. Can you give us some idea of how long it was before seven?

TRIAL EXAMINER: He said just about seven.

MR. WRIGHT: I know.

MR. SELBY: Objection. Now, this is the second time that this information has been gone over. I have no problem with the testimony of this witness. I don't know whether Your Honor does.

TRIAL EXAMINER: Speak for yourself, Mr. Selby.

MR. SELBY: I said I don't know whether you do or not.

TRIAL EXAMINER: What's your objection? Repetitive?

MR. SELBY: Yes, I object to this as being repetitive testimony.

TRIAL EXAMINER: It is, and yet I'm not going to clamp down. I'll let him ask it twice, even to his own witness. Go ahead. How long was this before seven?

310 THE WITNESS: Well, let me just put it broadly. I wouldn't say it was anymore than five minutes.

TRIAL EXAMINER: All right, next question.

Q. (By Mr. Wright) Now, at that time had the rollers, or what is it you call them, the conveyors, had the conveyors been turned on? A. No, they don't turn them on even though they're at work. They don't go on.

TRIAL EXAMINER: What time do they turn the conveyor belts on?

THE WITNESS: At seven o'clock they push the rubber on the conveyor

and it sits there until they are through with the parts on the conveyor. They're a small item.

TRIAL EXAMINER: When they quit on Friday there's still stuff on the conveyor?

THE WITNESS: Yes.

Q. (By Mr. Wright) So, there isn't any set starting time for the conveyor? A. No, there is not.

Q. Now, how about the tumblers, when do they go on? A. They go on after they're loaded, after seven, and they wouldn't go on at least until half an hour later because they're being loaded at seven and it takes at least 15 minutes and maybe twenty to load them up with CO₂. It freezes them under 60 degrees below zero.

311 TRIAL EXAMINER: Wait a minute. Do any of those gaskets stay in the tumblers over the weekend?

THE WITNESS: No, they do not.

TRIAL EXAMINER: All right.

Q. (By Mr. Wright) So, they're started up after they're loaded, and there's no set time to do that, either? A. No, there is not.

TRIAL EXAMINER: Excuse me. Is it they're tumbled at 60 below zero?

THE WITNESS: Yes.

TRIAL EXAMINER: All right.

Q. (By Mr. Wright) You were here, I assume, yesterday when Mr. Whitburn testified? A. Yes, I was.

Q. Did you at anytime have any orders from Chicago to close the plant here because of a union? A. No, I did not.

Q. Now, did you ever tell anybody that if the union came in you would have to close the plant here? A. No, I did not.

Q. Specifically, Mr. Whitburn in April of 1968? A. I don't know where he'd heard it, but I didn't say nothing like it.

TRIAL EXAMINER: Next question. The answer is no.

312 Q. (By Mr. Wright) Do you know what the plans are of the rubber

company as to staying in or expanding in Wakefield?

MR. SELBY: Objection.

TRIAL EXAMINER: Sustained.

MR. WRIGHT: Your Honor, this is to show they didn't have any intention of closing.

TRIAL EXAMINER: It's not relevant what their real intention was. We're concerned with whether they threatened the employees.

MR. WRIGHT: Well, since the claim is he said they'd close the plant I think their intention not to would be pertinent.

TRIAL EXAMINER: We disagree.

MR. WRIGHT: I know we disagree.

TRIAL EXAMINER: Next question, please.

MR. WRIGHT: But, we just want to make a record.

It's now twenty-five after twelve. I wonder if we could have a recess.

TRIAL EXAMINER: I was holding off, wondering whether you could complete your direct examination of this witness within a reasonable time.

MR. WRIGHT: I don't think I can complete it in five or ten minutes.

TRIAL EXAMINER: Even 15?

MR. WRIGHT: Maybe we can make it in 15, but —

313 TRIAL EXAMINER: I think there is a courtesy in giving counsel a little respite before starting on cross examination of a highly-important witness and that's why I would like, if it's possible, for you to complete your direct examination. If it's a matter of 10 or 15 minutes I think we ought to try. I'm not pushing you, you understand, but if your own statement is 10 to 15 minutes — I didn't make the statement —

MR. WRIGHT: I know. Of course, you know as well as I do that I can't guarantee that.

TRIAL EXAMINER: Oh no, I didn't ask you to guarantee it, but you're counsel and you're experienced counsel and your guess is usually a pretty educated guess.

MR. WRIGHT: Sometimes it's accurate and sometimes it's not. I've found that out in the past.

TRIAL EXAMINER: Well, let's keep on for awhile.

Q. (By Mr. Wright) Now, Mr. Tersinar, how many, if any, persons have you employed at the plant since the 26th of February? A. Since the 26th of February?

Q. Of this year, yes. A. I think we have four.

Q. Four new employees? A. New employees, people that quit were replaced after this February 26.

Q. And prior to the 2d of March how many have you employed?
A. One.

314 Q. I understand he was a janitor? A. He replaced the janitor, that's right.

TRIAL EXAMINER: Is that one of the four, the man who was the janitor?

THE WITNESS: Yes.

TRIAL EXAMINER: Who are the other three? Were those replacements for the three on February 21?

THE WITNESS: No, they were replacements after that, after the 26th.

TRIAL EXAMINER: After the 26th?

THE WITNESS: Yes, after the 26th.

TRIAL EXAMINER: All right, go ahead.

Q. (By Mr. Wright) Were they replacements of any of those who were separated on the 26th? A. No sir.

Q. Have you had any layoffs since the 26th? A. Yes, I had to lay off three girls and one mill man.

Q. For what reason? A. Lack of orders.

Q. Have they or any of them been recalled? A. Yes, we have one man that was recalled, Johnson.

Q. And of the numerous Johnsons, what was his first name?

A. They call him Kelly. I think it's Clarence.

Q. Clarence Johnson? A. Yes.

315 Q. And he'd been employed before the 26th of February? A. Yes.

Q. Now, you say you had three telephone conversations with Mr. Soltis on the 26th of February? A. At eleven o'clock I had one, that was the first one. I think one was in the afternoon, but I wouldn't want to say what time because I wouldn't know.

TRIAL EXAMINER: Well, were there three or two, do you remember?

THE WITNESS: Well, let's say right after twelve o'clock there might have been one, I was gone, there might have been one around then.

TRIAL EXAMINER: Around one?

THE WITNESS: Yes.

TRIAL EXAMINER: How many telephone conversations —

THE WITNESS: I had two on Monday, the 26th.

TRIAL EXAMINER: All right, there's your answer.

MR. WRIGHT: Then I misunderstood.

Q. (By Mr. Wright) I thought you said you had three? A. I had another one the next day.

Q. That was on the 27th, then? A. Yes.

Q. One of these Exhibits, I've forgotten which one, I think it's number 10, you got this from Mr. Soltis on the 27th, the first of the letters?

316 TRIAL EXAMINER: There is a letter that's stamped in "Quality Rubber" on the 27th. You don't want to go behind that.

Q. (By Mr. Wright) After you had the exchange of these two letters by each side which have been introduced in evidence did you have a meeting with Mr. Soltis or any other representative of the union? A. Yes, we did.

Q. When and where? A. I think it was the 15th of March at the Quality Rubber factory office.

Q. And is that the time Mr. Soltis appeared with the Thermofax copies of what he claimed to be the signed union cards? A. Yes.

Q. You and who else represented the company? A. Mr. Burns, Ivan Arentz, I and Mr. Soltis.

Q. Mr. Soltis represented the union? A. Yes, but he was there.

Q. Mr. Soltis was alone representing the union? A. Well, he had two employees, two people, with him, which was LeGassa and Twiggs.

Q. Well, was any attempt made that day to start negotiations in regard to this controversy? Or just what was done, let's put it that way?

317 A. Well, he came in and claimed he had the majority of our employees that he would like to present to us, so we looked at the cards and we seen that there were only five that was our employees at our place and the rest of the boys were out, which we claimed they are not our employees.

Q. Well, now they presented how many, the pictures of how many cards? A. Well, I just don't remember how many cards were there at that time.

Q. Well, I think it's on His Honor's desk. A. Seventeen, I think, is here.

Q. There are some Thermofax copies of cards. Do you suppose we can take a look at them?

TRIAL EXAMINER: 13(a) to (j) are Thermofax copies of cards.

MR. WRIGHT: Will the Reporter please show the witness 13(a) through 13(j)?

(General Counsel's Exhibits 13(a) through 13(j) were handed to the witness.)

THE WITNESS: Yes, these are the copies.

Q. (By Mr. Wright) And there were how many of them?

TRIAL EXAMINER: They speak for themselves.

MR. WRIGHT: They speak for themselves, I know, but -

Q. (By Mr. Wright) I mean cards, not just sheets of paper.

TRIAL EXAMINER: They'll still speak for themselves, but for convenience, can you count them quickly?

THE WITNESS: Thirty names.

TRIAL EXAMINER: How many sheets of paper?

THE WITNESS: Thirteen sheets here.

TRIAL EXAMINER: And how many on each sheet? How many cards are pictured on each sheet?

THE WITNESS: Two. I thought there was three, but there's two.

TRIAL EXAMINER: All right, that's 13 by 2, that's — are they all —

THE WITNESS: I made a mistake. I think there are ten here, if I ain't mistaken. Let me just count these again.

TRIAL EXAMINER: Let me have them. So that the record is clear, just a moment —

THE WITNESS: Well, Your Honor —

TRIAL EXAMINER: Take it easy.

THE WITNESS: I was interrupted.

TRIAL EXAMINER: There seems to be ten sheets, each one picturing two cards. Go ahead, next question.

Q. (By Mr. Wright) So, that was the basis upon which Mr. Soltis claimed he had a majority, is that it? A. Yes.

Q. And you denied it on what particular grounds? A. I see only five people there that is our employees.

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Q. And why did you consider the other fifteen not to be your employees? A. Well, to me, as long as they refused to work and walked out I figured they were not our employees. They quit.

Q. I see. What else, if anything, happened at that meeting with Mr. Soltis? A. Well, that was about it. It only lasted about 15 minutes.

Q. Did you ever have any subsequent meetings with Mr. Soltis?
A. No.

Q. It does appear, however, from the Exhibits that there were more letters written. A. I didn't hear that question.

Q. I say, it would appear from the Exhibits there were - oh, I guess there were just four letters.

TRIAL EXAMINER: My recollection is the letters all preceded this conference.

MR. WRIGHT: Yeah, four letters.

MR. SELBY: Your Honor, just for purposes of clarity of the record, that is not true.

TRIAL EXAMINER: All right. You've got an opportunity to cross examine.

Q. (By Mr. Wright) All right. What further negotiations were had with Mr. Soltis, or any other representative of the union? A. I don't remember anymore.

Q. Well, now, I assume that Mr. Selby came to see you. Do you remember that? A. Yes. That's not from the union, he's from the Labor Board, isn't he?

MR. SELBY: National Labor Relations Board, Region 30.

THE WITNESS: All right.

TRIAL EXAMINER: Next question.

Q. (By Mr. Wright) And when was that? A. Well, I've got a pretty poor memory here. The 15th of March?

TRIAL EXAMINER: Let's get the witness's testimony, Mr. Selby. You'll have an opportunity to cross examine and clarify anything you think

needs clarification. It's close enough. You think it was about the 15th of March?

THE WITNESS: I'm pretty sure.

TRIAL EXAMINER: All right, that's the witness's answer. Next question.

Q. (By Mr. Wright) Did Mr. Selby state to you why he wanted to see you? A. Yes, he wanted to get some information, to ask me some different things that I answered in the statement.

TRIAL EXAMINER: In his what?

THE WITNESS: In his statement, or whatever you want to call it. The yellow paper, I think it's there.

321 Q. (By Mr. Wright) What did Mr. Selby tell you as to what particular information he desired?

TRIAL EXAMINER: How does that touch on the issues here in direct examination, Mr. Wright?

MR. WRIGHT: Well, I was going to ask some questions about this affidavit, but -

TRIAL EXAMINER: Why are we concerned with the affidavit? The affidavits aren't in this case.

MR. WRIGHT: If the affidavit is not going to have anything to do with it, then I don't need to ask him about it.

TRIAL EXAMINER: It's not in the record. I'm going to decide this case on the record. Anymore questions?

MR. WRIGHT: There will be some more questions.

TRIAL EXAMINER: How long do you think it will take?

MR. WRIGHT: Oh, I don't know, maybe another ten minutes, maybe not,

maybe more, I don't know exactly.

TRIAL EXAMINER: Next question.

Q. (By Mr. Wright) Now, Mr. Tersinar, at the time of this occurrence on the morning of the 26th of February, how long did you talk with the men?

A. The morning of the 26th?

Q. How much of a conversation did you have, yes. A. I just merely asked them if they were going to work and that was about all the conversation we had with the men.

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Q. Were you standing still or walking around? A. I was standing still at that time, when I asked them to go to work.

Q. Had you been pacing up and down at any time while you were with the men? A. Yes, I was pacing back and forth, watching the machines, looking around, that's what I do all the time.

Q. But I mean at the time you had all these men and you were around the picnic table? A. I was pacing around.

Q. And you say you were looking at what? A. Looking things over.

Q. Was any of the machinery started as yet? A. The machines were getting started. The boiler was started, the compressor was started.

Q. Were you out in the other room at anytime? A. Yes, I was there practically all morning before starting time.

Q. No, but I mean let's get it down to the comparatively few minutes that you and the men were there; had they congregated at the table when you got there? A. They sat at the table as soon as they came in.

Q. I mean when you got there, were they already all there? A. You mean when I —

Q. When you walked into the — A. Well, I don't know if they
were all there, but I seen six or seven sitting down there and a couple of
323 them walking, some were in the locker, as I came in. I just said, "Boys, are
you going to work?" They —

MR. SELBY: Objection. How many times do we have to go over this
stuff?

MR. WRIGHT: That isn't what I'm after.

TRIAL EXAMINER: Objection's overruled.

Q. (By Mr. Wright) It's been testified to here, and you heard it, that
you were walking up and down all the time that you were talking to the
men. Now, what I want — A. No, I didn't talk to the men until
after it was time for them to go to work.

TRIAL EXAMINER: Come, be reasonable. He also said he walked up
and down. Next question. Come on, you've got what you want.

Q. (By Mr. Wright) You walked up and down? A. Talking to
nobody, thinking.

Q. Talking to nobody? A. Getting things started.

Q. And that was after you had talked to the men or before? A.
No, before.

Q. After you started to talk to the men, did you walk up and down?

TRIAL EXAMINER: It takes a "yes" or "no."

THE WITNESS: After the men walked out I went back into —

324 TRIAL EXAMINER: No, no, no, that's not the question. Will you
please try to answer the question? When you were talking to the men were
you walking up and down?

THE WITNESS: I might have, yes.

TRIAL EXAMINER: All right, next question.

MR. WRIGHT: All right.

Q. (By Mr. Wright) Do you remember to what extent —

TRIAL EXAMINER: What?

Q. (By Mr. Wright) — to what extent? Did you walk a great distance or just a few steps?

TRIAL EXAMINER: Are we back in the measurement business?

MR. SELBY: Objection.

MR. WRIGHT: No, no, just an approximation.

MR. SELBY: Objection. Why is this material?

MR. WRIGHT: You brought it up at the beginning.

TRIAL EXAMINER: Well, there has been testimony that he walked around, not that he walked 5 or 20 feet or 14 or 3 feet, but just that he was walking up and down and talking. Now he says he may have.

MR. WRIGHT: All right.

Q. (By Mr. Wright) At this one meeting you had with Mr. Soltis, was any suggestion made about an election? A. About an election?

325

Q. A union election in the plant. A. Yes, we asked him if he wanted to have an election here and he has turned it down.

MR. WRIGHT: I think that's all the direct.

TRIAL EXAMINER: Very well. We'll take a recess — do you mind if we cut the recess slightly shorter? Mr. Selby, can you estimate the length of your cross examination?

MR. SELBY: I'd say about half an hour, Your Honor.

TRIAL EXAMINER: Have you formed any thoughts about rebuttal?

MR. SELBY: There is a possibility of short rebuttal, very short.

TRIAL EXAMINER: I'm trying to figure out whether we're here for another night.

MR. SELBY: That's my problem, too.

TRIAL EXAMINER: I know, it's close.

MR. SELBY: Hopefully we can get away by midafternoon. Of course, there's no indication of how many more witnesses Respondent has.

TRIAL EXAMINER: Oh, there may be re-rebuttal, yes. Excuse me, do you have any more witnesses?

MR. WRIGHT: I've got at least two more.

TRIAL EXAMINER: Well, that pretty well solves it. We will enjoy this town probably for tonight. It's now quarter to one — quarter to two.

* * * * *

326

CROSS EXAMINATION

* * * * *

327 Q. (By Mr. Selby) Did I understand you correctly on direct examination, Mr. Tersinar, to say while you were in Chicago at the plant there before coming up to the plant here in Wakefield you were teaching your son to take your place? A. Yes.

Q. To take your place as what? A. In the future, to take my place when I retire.

Q. You mean as plant manager? A. Yes.

Q. How long were you teaching him in Chicago? A. Well, three years.

328 Q. You indicated earlier, Mr. Tersinar, that your son didn't have anything to do with hiring or firing employees? A. That's correct.

Q. Or even effectively recommending that, is that correct? A. That's correct.

Q. Did you ever make a contrary statement to that? A. I am not sure.

Q. You're not sure? A. No.

Q. Do you recall giving a statement to me wherein you said your son was the foreman on the second shift and that he would consult with you on any problems that he had? A. Yes.

Q. Do you recall telling me he did not have the authority to discharge, hire or promote anyone? A. Yes, I remember that.

Q. Do you recall also saying he did have the authority to recommend that action to you? A. Only to me.

Q. Do you recall saying that? A. Only through me.

Q. Do you recall saying this statement: "He did have the authority to recommend that action to me?" A. Repeat that once more, please.

Q. I quote, "He did have the authority to recommend that action to me," end quote. A. Yes.

329 Q. Did you also make this statement, quote, "Also he responsibly directed the work of the employees on the second shift," end quote?

A. You'll have to repeat that once more.

Q. Quote, "Also he responsibly directed the work of the employees on the second shift," end quote. A. Through my —

Q. Did you make that statement to me? A. Yes.

Q. In a second statement to me did you also say, quote, "John Tersinar is directing employees on the first shift like he was on the second shift, end quote? A. Yes, I did.

Q. Did you also say, quote, "He takes over for me when I am absent from the plant, about one hour per week," end quote? A. I told you that.

Q. Directing your attention, Mr. Tersinar, to Sunday evening, February 25, do you recall receiving a phone call from Mrs. Michael Vilencia?

A. Yes.

Q. What do you recall her telling you? A. Very little, except her husband was threatened by some people that was trying to have him sign some card. I didn't ask no questions and I was not interested. I was watching the television and the conversation was very short.

330 Q. Do you recall anything else? A. That's about all.

Q. Do you recall telling me in a statement, and I quote, "She said that her husband didn't have anything to do with union organization in the plant," end quote? A. No, I do not.

Q. You don't recall that? A. No sir.

Q. You gave me a statement on March 15, 1968, is that correct, sir?
A. Uh huh.

Q. And I hand you that document consisting of six pages and ask you if your signature appears on the last page of the document? A. Uh huh.

Q. Yes? A. Yes.

TRIAL EXAMINER: Before you go into any parts of it, is that sworn, Mr. Selby?

MR. SELBY: I'm sorry.

Q. (By Mr. Selby) Did you swear to the truth of this statement at the time you made it? A. Yes, I did.

Q. Would you read to yourself paragraph 7 -

331 MR. WRIGHT: Now, just a minute, if the Court please, I assume that Mr. Selby is the one who took the affidavit. Now, I wonder if he is a Michigan notary?

TRIAL EXAMINER: As an agent of the Board, he is authorized by an Act of Congress to administer oaths and that's effective in a Federal proceeding.

MR. WRIGHT: There's no statement on here as to his authority. It simply says "Attorney, NLRB."

TRIAL EXAMINER: Well, as an attorney he's an agent of the Labor Board. Will you give Mr. Wright the section of the Act? What is it? Ten? Eleven? It's probably 11 or 12 of the Act, maybe it's in the beginning, I've forgotten. Three? Four? Take my word that it's there. Do you know where it is, Mr. Selby?

MR. SELBY: No, Your Honor, I can't get to it immediately.

TRIAL EXAMINER: Well, I know it's there. I've used it. I have been an attorney for the Labor Board in my day and I know it is there.

MR. SELBY: I believe it is Section 11, Your Honor.

TRIAL EXAMINER: I thought so.

MR. SELBY: And it is in paragraph, sub-paragraph (1), page 118, of the most recent text of the amended Act.

TRIAL EXAMINER: "Any member of the Board or any agent designated by the Board for such purposes may administer oaths and affirmations, examine witnesses and receive evidence." It's an Act of Congress. I'm bound

332 by it. In this proceeding so are you. Go ahead.

Q. (By Mr. Selby) Will you read paragraph 7? A. About six -

TRIAL EXAMINER: Just a moment. Is this for refreshing recollection, Mr. Selby?

MR. SELBY: Yes sir.

TRIAL EXAMINER: Read it to yourself and when you have finished reading it put it down and pay attention to Mr. Selby's question.

You know, Mr. Wright, you have a right to look at anything that's being used to refresh your witness's recollection.

MR. WRIGHT: I'm aware of that and when he's through with it I'd like to have a look at it.

TRIAL EXAMINER: You can look at it now or later, as you please.

MR. WRIGHT: After Mr. -

TRIAL EXAMINER: Do you have a copy of it, by the way?

MR. WRIGHT: I've got what purports to be a copy of it.

MR. SELBY: Your Honor, this is to advise you that the Respondent has been furnished with a copy of this, at the time, as a matter of fact, of the taking of this statement.

TRIAL EXAMINER: All right. You apparently have a copy. He indicated the portion by number and you can read it at the same time.

333 THE WITNESS: Well, this -

TRIAL EXAMINER: Now, wait a minute, Mr. Tersinar. Have you read the part Mr. Selby asked you to read?

THE WITNESS: Yes sir.

TRIAL EXAMINER: All right, now, just wait for him to ask you a

question.

Q. (By Mr. Selby) You read paragraph 7, is that right? A. Yes.

Q. All right. Now, was the information in that paragraph true at the time you gave it to me?

TRIAL EXAMINER: That isn't the kind of question you ask under the circumstances.

MR. SELBY: All right.

Q. (By Mr. Selby) Does that help you recall what you may have said on the day in question? A. Ask me the same question you asked me before this.

TRIAL EXAMINER: Now, wait a minute, Mr. Tersinar. Will you please listen to whatever question the lawyer asks you. It's up to him to decide on what the question is. You try to answer that question if you can. If you can't answer it, simply say you cannot answer it.

His question was does this help you to remember what you told him. Does it?

THE WITNESS: Yes, it does.

TRIAL EXAMINER: All right. Now, put your question, Mr. Selby.

334 Q. (By Mr. Selby) Now, do you recall at this time what you said to Mrs. Vilencia on February 25? A. I read it and I still don't remember what I said.

TRIAL EXAMINER: All right, that's your answer.

Q. (By Mr. Selby) Was this statement true at the time you gave it? A. As far as I recollect, it was, yes.

Q. Do you deny that this, in fact, happened? Now, "she said that her husband didn't have anything to do with union organization in the plant?"

A. I don't remember that she said it, but I heard it.

TRIAL EXAMINER: Mr. Selby, you have here the principal of the Respondent company. Anything in there constitutes an admission. If you want it in the record you have to offer it.

MR. SELBY: All right, Your Honor.

TRIAL EXAMINER: You may offer any part and we'll handle that.

MR. SELBY: At this time, then, I do offer in evidence an affidavit consisting of six pages signed by William Tersinar given on March 15, 1968, and I show that affidavit to the Respondent.

TRIAL EXAMINER: You're offering the entire affidavit at this time?

335 MR. SELBY: No, I'm offering it specifically with reference to the conversation set forth in paragraph 7.

TRIAL EXAMINER: Well, then, you're offering paragraph 7.

MR. SELBY: Yes, Your Honor.

TRIAL EXAMINER: All right, let me have it on that basis so I can rule clearly. Paragraph 7 of the affidavit dated what?

MR. SELBY: March 15, 1968.

TRIAL EXAMINER: OK. Any objection?

MR. WRIGHT: No, we have no objection to that being a part of the affidavit, paragraph 7.

TRIAL EXAMINER: I mean is there any objection to the receipt into evidence of paragraph 7 of the affidavit?

MR. WRIGHT: No.

TRIAL EXAMINER: All right. Please read it into the record and I will not take the entire yellow document because it's not in evidence.

MR. SELBY: I quote, "7. About 6-7 p.m., Sunday evening, February 25, I received a phone call from Mrs. Michael Vilencia whose husband works at the plant. She said that some of the boys were threatening her husband. She said that her husband didn't have anything to do with the union organization in the plant. I don't — well, actually, Your Honor, there's no need to offer the entire paragraph unless you want the entire paragraph.

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TRIAL EXAMINER: You've offered the entire paragraph.

MR. SELBY: All right. "I don't remember saying I hoped that I didn't have to close the plant due to the high overhead. I did not say that the employees should have waited a couple of years before they organized. I didn't say that wages at the plant might possibly have gone up to \$2.65 by the summer," end quote.

TRIAL EXAMINER: All right, that is received as part of the record.

Q. (By Mr. Selby) Did you testify on direct examination, Mr. Tersinar, that you heard nothing about employees complaining about the ten-minute break? A. No, I never heard anything.

Q. OK. Did you also testify you never heard any complaints about not having a lunch hour? A. No, no complaints.

Q. You had no complaints like that? A. No sir.

Q. Did you ever make a contrary statement to that? A. No.

Q. You didn't? Did you ever say, quote, "About the first of the year (1968) one of the employees asked me why we didn't have a lunch hour," end quote? A. Did I say that?

Q. Yes, did you say that to me? A. No, I didn't

337

Q. You did not. I will hand you this same document you have just looked at which was marked General Counsel's Exhibit 17 for identification and I direct your attention to paragraph 8, page 3. Read it to yourself, the

first sentence.

(The above-mentioned document was marked General Counsel's Exhibit 17 for identification.)

Does that help you remember what you may have heard from one of the employees? A. Yes, it does.

Q. All right. What do you remember now? A. I did say they did ask me about lunch hour.

Q. Who's "they?" A. I have the slightest idea who it was, but it was brought up. I've told the men there was no such thing as a lunch hour in the press room, and if I ain't mistaken, I have said there isn't a rubber company —

Q. No, no, no, I just want to know whether you remember now having talked to employees about — A. Yes, I did.

Q. —their complaints concerning a lunch hour. OK.

TRIAL EXAMINER: Is the answer yes?

THE WITNESS: Yes.

Q. (By Mr. Selby) Now, do you recall when this took place? A. Sir?

338 Q. Do you recall when this conversation or these conversations took place? A. No, I do not.

Q. Do you recall reading this statement just a few minutes ago and that indicates the first of the year, 1968? A. Do I have to be that specific, to give you a date —

TRIAL EXAMINER: Wait just a moment, just a moment.

THE WITNESS: I don't know.

TRIAL EXAMINER: You do have to be specific in answering the

question of counsel. If you can't answer it, you may, of course, say you cannot answer it; but, if you try to answer it, you must answer the question he asks you, not any other question.

Now, put your question again, Mr. Selby.

Q. (By Mr. Selby) Do you recall reading the statement just one or two minutes ago where it stated that it was around the first of the year, 1968?

A. Yes.

Q. Now, would that be a proper characterization of the time that it was? A. Yes, it probably is around there, but I assume that's when it was.

TRIAL EXAMINER: You're not questioning the fact it was sometime around the first of the year?

339

THE WITNESS: Sometime at the beginning of the year.

TRIAL EXAMINER: All right.

Q. (By Mr. Selby) Mr. Tersinar, how long did you say Sibley worked before he started giving you problems? A. Well, I've had calls on the second week that he was there.

Q. How many weeks did he work in toto for you? A. I think he was there with us less than a month. I have not got the exact date, but he was still on his \$1.60 an hour, which is the minimum wage for 30 days. So, he was still on 30 days.

Q. If I recall correctly, I think you stated on direct examination he had been with you for two weeks and there were no problems, and then the third week you started having problems, is that correct? A. That's correct.

Q. And he wasn't with you any longer than three or four weeks, at the very most, is that right? A. That's correct.

Q. Do you recall giving a statement wherein you indicated that he worked - I'll withdraw the question.

Could I have one moment, Your Honor?

Do I recall correctly that you stated on direct examination that Sibley was with you about three weeks before he was terminated?

340 A. In less than a month.

Q. OK. Now, just to refresh my recollection, it has skipped my mind, can you tell me when you began having difficulties with him? A. After two weeks.

Q. You testified on direct examination that Sibley was throwing metal and rubber about the plant, is that correct? A. Correct.

Q. Nobody else was doing it? A. Not that I seen.

Q. Not that you seen. It wasn't common practice to take -
A. No sir, no sir.

Q. - rubber and throw it around? A. No sir, it's not, it's not allowed.

TRIAL EXAMINER: It's not allowed, but was it common practice for the employees to do that?

THE WITNESS: It's not common practice.

Q. (By Mr. Selby) Before Sibley's termination you say you had received phone calls from your son, is that right? A. Correct.

Q. Concerning Sibley? A. Correct.

Q. Had you ever confronted him personally before you terminated him? Did you ever tell him personally you didn't want him to throw the rubber or metal around?

341 A. Once before I've talked to him.

Q. When was that? A. Well, I couldn't point out the exact date, but it was in the third week that he was employed.

Q. Now, you didn't mention that on direct examination. This is something you just forgot? A. Nobody asked me.

Q. Nobody asked you? A. No.

Q. So you think it was one time. What time of the day or night was it? A. It could have been before I went home, but I did talk to him once before.

* * * * *

345 JOHN W. TERSINAR

was called as a witness by and on behalf of Respondent and, after being sworn, was examined and testified as follows:

* * * * *

346 THE WITNESS: John William Tersinar.

TRIAL EXAMINER: Proceed.

DIRECT EXAMINATION

Q. (By Mr. Wright) You say your name is John William Tersinar?
A. Yes sir.

Q. And are you the son of William Tersinar who was just on the witness stand? A. Yes sir.

Q. How old are you? A. I'll be 23 April 11.

TRIAL EXAMINER: You will be 23 on April 11 or you just passed 23?

THE WITNESS: I mean - yeah, I'll be 23 in April, on the 11th.

TRIAL EXAMINER: All right.

Q. (By Mr. Wright) In other words, you were 22 two months ago?

A. Yes.

Q. OK.

TRIAL EXAMINER: Some people look forward, some look back. It's all right, go ahead.

Q. (By Mr. Wright) Are you employed at the Quality Rubber Company? A. Yes sir.

347 Q. How long have you been there? A. It'll be five years this coming September.

Q. In Wakefield? A. No, over here about a year and a couple of months.

Q. I beg your pardon? A. A year and a couple of months.

Q. In Wakefield itself? A. Yes.

Q. And before that you say you worked for it in Chicago? A. Yes sir.

Q. Altogether you've worked about how long for the company?
A. It'll be about five years in September, this coming September.

Q. Now, in February of this year what was your job at the Quality Rubber Company plant here? A. Well, I have to see that the stock is all cut and that we're using the right stocks for the right parts and to make sure they're opening the molds right without, you know, damaging them and to watch that the men do things right, and that's about it.

Q. Was that in the press room, or where? A. Yes sir, in the press room.

Q. You say that you have to see that the men do things right; what

do you mean by that? A. Well, you have to explain to the men, you know, how to open up the molds and stuff like that and to watch if the
348 stock is running right. Sometimes there'll be bad stock or something like that and it won't cure right. Or you have to make sure the stock gets a good cure on it. You have to watch the stock pretty close. Sometimes we'll get a bad mix in there and they might run it without you knowing about it and then all that work is gone.

Q. Now, was there any training of operators going on in the press room? A. Let's see. I think I had a lot of new men. Sibley was one of them and Pikka was pretty new there.

Q. Did you have any special duties so far as the new employees were concerned? A. Well, yeah, I had to close ride on them.

Q. I mean, were you sort of an instructor for them? A. Yes.

Q. For what purpose? A. To watch that they loaded it right and to make sure that the parts are coming out all right and stuff like that.

Q. Did you have any authority to hire or fire anybody? A. No, I didn't.

Q. Or to recommend the hiring and firing of anyone? A. No.

Q. Who gave you or who told you what to do in the press room?
A. My Dad.

349 Q. And to what extent — oh, scratch that a minute.

So far as the percentage of what you did, how much was done on direct orders of your father? A. Mostly all of it, I guess.

Q. And how long has that been going on? A. Ever since I've been working.

Q. Do you operate any of the machines yourself? A. Yes.

Q. For instruction or for production? A. Both.

Q. How much for production, what percentage for production?

A. Right now that's all I'm doing.

Q. And in February of '68? A. Instructing.

Q. All of it instructing? A. Yeah.

Q. Do you remember when Sibley came to work in your department?

A. Uh huh.

Q. When was it? A. Oh, I don't know the date, but I remember when he came.

Q. Well, can you give us an approximate date? A. No, I couldn't.

Q. Well, was it in February of this year? A. I guess so.

350 Q. Well, do you guess or do you know?

TRIAL EXAMINER: Mr. Wright, it's been established on the record, as I recall by Sibley himself, and unless you want to contradict it there's no need to pin this man down.

MR. WRIGHT: I wanted to be sure the witness knew about it, I'm not trying to contradict it.

TRIAL EXAMINER: All right.

Q. (By Mr. Wright) And who brought him into the press room?

A. I don't know. I think he came in by himself. You mean asking for the job, or what?

Q. No, after he was hired who brought him in and said he was hired?

A. My Dad.

Q. Oh. And asked you to do what with him? A. To show him how to run the molds and watch him.

Q. Did you proceed to do so? A. Yes sir.

Q. Now, what kind of a job did Sibley do? That is, for the first week he was there? A. He was working on the Esco molds there, little metal slugs, it's about 100-cavity, I think, he has to load the metal individually. There's three metals that go into one cavity and he has to insert them in there and you have to watch that they're straight and, you know, that you don't leave none in there because it'll damage the mold.

351 Q. Now, I asked you what kind of a job did he do? A. Press-man.

Q. Was he good, bad or indifferent?

TRIAL EXAMINER: Was he good or was he bad at that work?

THE WITNESS: What, at first?

TRIAL EXAMINER: At first.

THE WITNESS: Everybody's bad at first. There ain't nobody who's good at first.

Q. (By Mr. Wright) All right, how about the second week? A. No improvement, I don't think. I would say no improvement.

Q. Now, did you have any trouble with Sibley? A. Yes sir.

Q. When did it start? A. About the second week.

Q. What kind of trouble? A. Throwing things and neglecting his work and walking away. Oh, all things.

Q. What did you do about it? A. I called my Dad.

Q. What did your father do about it? A. Well, my Dad told me to warn him most of the time and he said he'd talk to him.

Q. Did you warn him? A. Yes, I did, everytime I seen him doing

something.

352

Q. I beg your pardon? A. Everytime I seen him doing something I'd warn him.

Q. Did your father come into the press room to see Sibley, that you know of? A. I don't know. What do you mean, which night?

Q. I mean did you see your father in the press room or in the office talking to Sibley? A. Yes.

Q. All right, when? A. I couldn't say when.

TRIAL EXAMINER: When was it during Sibley's period of work? The first week, second week or third week?

THE WITNESS: I don't know.

TRIAL EXAMINER: All right, next question.

Q. (By Mr. Wright) How many times did your father come in and talk to Sibley? A. I wouldn't know that, either.

Q. More than once? A. Maybe.

TRIAL EXAMINER: He said he doesn't know. It's your witness.

Q. (By Mr. Wright) You say you don't know? A. No, I don't.

Q. All right. Now, did anything in particular happen the third week of Sibley's being there? A. Yeah, I guess that's the night that was the worst, I guess.

353

Q. All right, what happened? A. Well, he was throwing metal around and he'd walk away from his presses and I had to watch his pump half the time so it wouldn't blow up and everything else.

Q. Then what did you do that night? A. I called my Dad.

Q. About what time of the day was it? A. This was in the

evening, about, I think, 6:30 or twenty after.

Q. Then what after you called your father? A. I called my Dad up and my Dad says, "I'll come in." So, I don't know, about 10 minutes later, 15, my Dad came over there and he told me to call Sibley to the office. So, I called Sibley and my Dad went into the office with Sibley for a couple of minutes and Sibley come out of the office and right away ran to the press line where Curly and Pikka was on the same line.

Q. Curly is who?

TRIAL EXAMINER: Now, wait a minute, is that the end of — you asked him what happened. Now, is that the end of what happened?

THE WITNESS: No.

TRIAL EXAMINER: Because you interrupted, it seemed to me, because he said he ran to where Curly and Pikka were and it's at that point that you interrupted, so let him finish, please.

354 MR. WRIGHT: All right, go ahead.

THE WITNESS: So, he ran out there to Pikka and Curly and he says, "I'm fired." Then Pikka and Curly says, "Let's go, then." They waved to everybody and they were asking everybody to come on, you guys, let's go, and everybody just stayed over there. So, Pikka and Curly walked up the press line and started walking out towards the door. So, I got Dave Swearingen and me and we emptied their molds because they had their molds all down.

TRIAL EXAMINER: Next question.

Q. (By Mr. Wright) Curly's who? A. Herbert Johnson.

Q. Herbert Johnson? A. Yes sir.

Q. All right. And then, so Sibley, Herbert Johnson and Pikka —
A. Yes sir.

Q. — got out of there, is that it? A. Uh huh.

Q. Did they come back? A. No.

Q. Now, while you were working there this year did Herbert Johnson, I think the one you called Curly, come to you as a representative of any of the men in the press room and ask you about a rest period? A. No.

355 Q. Or a break? A. (Witness shakes head.)

Q. Did any of them do so individually? A. No.

Q. At this time, during this period between the first of the year and the 21st of February of '68, was there any rest break in the press room? A. No.

Q. I'm talking about your shift now. A. Yes sir, I know.

Q. Did any of the employees on any of your shifts make any requests to you for breaks? A. No sir.

Q. Now, on the evening of February 21, the early night of February 21, just what had Sibley been doing that caused you to call your father, specifically for that night? A. Well, he wasn't attending to his work.

Q. Tell us just exactly what he did? A. Well, like if his presses are down he's supposed to be there unloading them, and he was over someplace talking to somebody else, and you have to go looking for him, telling him that his work is unattended, and then he'll turn the pump on and walk away from it and forget to shut it off, and all kinds of stuff.

356 Q. Specifically, did he throw anything around? A. Yes, he was throwing rubber, metal, anything. I seen him taking it off the table, I seen him taking it off the floor and throw it.

Q. Now, I asked you to begin with specifically the night of the 21st of February; are you confining your answer to that? A. Yes.

Q. Anything else that night? A. No.

Q. Now, John, what was likely or what might happen to the presses if they were left unattended? A. They'd blow up and probably go through the ceiling, the top of the head would go through.

TRIAL EXAMINER: The top of the head?

THE WITNESS: Yes.

Q. (By Mr. Wright) You mean the head of the mold, is that it?
A. Yes, the press.

Q. Has that ever happened at any plant like this you were in?
A. I don't think so.

MR. WRIGHT: I think that's all.

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NATIONAL LABOR RELATIONS BOARD

Packet to John - 2014-07-07 10:10:00

Dissections { **Posterior** | **Anterior**

In the matter of C. H. Ladd.

Date 6/1/1941. Witnessed by _____
No. Pages /
Bureau of Prohibition, U. S. Department of Justice
Washington, D. C.

Form NLRB-501
(2-67)For _____
Budget Number No. 61-R001.12UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

(1)

DO NOT WRITE IN THIS SPACE

Case No.
30-CA-780Date Filed
March 1, 1963

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer <u>Quality Rubber Manufacturing Company Inc.</u>	b. Number of Workers Employed <u>24 Approximately</u>
c. Address of Establishment Street and number, city, State, and ZIP code) <u>301 Lake Shore Dr., Lakefield, Michigan</u>	d. Employer Representative to Contact <u>Mr. William Tersinaro</u>
e. Type of Establishment (Factory, mine, wholesaler, etc.) <u>Factory</u>	f. Phone No. <u>244-9061</u>
g. Identify Principal Product or Service <u>Gaskots</u>	

b. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) of the National Labor Relations Act, (List subsections)
and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

(8(a)(3) Allegation): On or about February 26, 1963 the above-named employers terminated the employment of Glenn LeGasse, Ray Ionti, Vernon Mattson, Nels W. Luoma, Douglas Twiggs, Robert Whitburn and George Ionni, its employees, because of their membership in and activities in behalf of the United Steelworkers of America, AFL-CIO, a labor organization, because they engaged in concerted activities with other employees of said employer for the purpose of collective bargaining and other mutual aid and protection, and in order to discourage membership in said labor organization, and at all times since that date the above-named employer has refused and does now refuse to employ the above-named employees.

(8(a)(1) Allegation): By the acts set forth in the paragraph above and by other acts and conduct, the above-named employer interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, local or international)

UNITED STEELWORKERS OF AMERICA, AFL-CIO

4a. Address (Street and number, city, State, and ZIP code)

4b. Telephone No.

1500 Carson St., Station Millings, Pittsburgh, Pa. 15242471-5231

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (to be filled in when charge is filed by a labor organization)

UNITED STEELWORKERS OF AMERICA, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By John R. Coughlin
(Signature of representative or person filing charge)Staff Representative
(Title, if any)Address 100 N. Zeeb, Gaspian, Michigan 49519 Telephone No. 400-1111 Date March 27, 1963
(Date)

WILFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)



NATIONAL LABOR RELATIONS BOARD

REGION 30

Suite 230, Commerce Building, 744 North Fourth Street
Milwaukee, Wisconsin 53203

Telephone 272-8600
Extension 3375

March 1, 1968

Quality Rubber Manufacturing Company Inc.
Attn: William Tersinate
801 Lake Shore Drive
Wakefield, Michigan 49968

Re: Quality Rubber Manufacturing Company Inc.
Case No. 30-CA-730

Gentlemen:

A charge, copy enclosed, under the National Labor Relations Act, has been filed in the above-entitled matter and has been assigned for investigation to Dennis N. Salby, Attorney. Please cooperate with him when he contacts you during the investigation of this matter so that we may have the benefit of your account of the facts herein to assist us in our investigation. Inquiries concerning this matter should be addressed to him.

I would appreciate receiving from you promptly a full and complete account of the facts and a statement of your position in respect to the allegations as set forth in the charge. Enclosed for your information is a Notice, Form NLRB 4541, outlining procedures followed in the investigation of unfair labor practices and the disposition of such charges.

Attention is called to your right, and the right of any party, to be represented by counsel or other representative in any proceeding before the National Labor Relations Board and the Courts. In the event you choose to have a representative appear on your behalf, please have your representative complete "Notice of Appearance" Form NLRB-4701 and forward it promptly to this office.

Also please complete and return the enclosed questionnaire (a copy is enclosed for your retention).

Very truly yours,

George Squillacote
Regional Director

Enclosures (4)

REGISTERED MAIL
Return Receipt Requested

G. C. Exh. 1(b)

NATIONAL LABOR RELATIONS BOARD
 Docket No. 30CA-78c OFFICIAL EXHIBIT NO. GC-1(6)

Disposition	Identified _____
	Received <input checked="" type="checkbox"/>
	Rejected _____

In the matter of Quality Rubber
 Date 6-26-68 Witness J Reporter Forbes

No. Pages 2
 Bureau of Finance, U. S. Post Office Department
 Washington, D. C.

I certify that on the above date, the original (or copy) of this letter together with a copy of the above-referred to charge were placed in a postage prepaid envelope marked registered, addressed to the addressee named above and deposited in the U. S. Mail.

Judith A. Zoladkiewicz
 Judith A. Zoladkiewicz

Subscribed and sworn to before me this 4th day of March, 19 68

N. Jeanne Dixon
 Designated Agent N. Jeanne Dixon
 30-8A (8/67)

FOMN NLRB-401 (2-67)		Form Approved Budget Bureau No. 61-R001.12	
UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD			
Amended		CHARGE AGAINST EMPLOYER	
INSTRUCTIONS: File an original and 3 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.		(c) DO NOT WRITE IN THIS SPACE	
		Case No. 30-CA-780	
		Date Filed March 11, 1968	
1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
a. Name of Employer Quality Rubber Manufacturing Company, Inc.	b. Number of Workers Employed 24 APPROXIMATELY		
c. Address of Establishment Street and number, city, State, and ZIP code) 801 Lake Shore Dr. Wakefield, Mich.	d. Employer Representative to Contact J.F. Tillejar Tersinare	e. Phone No. 224-9061	
f. Type of Establishment (Factory, mine, wholesaler, etc.) Factory	g. Identify Principal Product or Service Gaskets		
b. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.			
2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)			
<p>(8(a)(3) Allegation): On or about February 26, 1968, the above-named employers terminated the employment of Glenn LaGrassa, Ray Lonti, Vernon Lattson, Nels W. Luoma, Douglas Twiggs, Robert Whitburn and George Lonti, its employees, because of their membership in and activities in behalf of the United Steelworkers of America, AFL-CIO, a labor organization, because they engaged in concerted activities with other employees of said employer for the purpose of collective bargaining and other mutual aid and protection, and in order to discourage membership in said labor organization, and at all times since that date the above-named employer has refused and does now refuse to employ the above-named employees.</p> <p>(8(g)(1) Allegation): By the acts set forth in the paragraph above and by other acts and conduct, the above-named employer interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.</p> <p>Amend to include:</p> <p>(8(e)(3) Allegation): On or about February 21, 1968, the above-named employers terminated the employment of Ray Sibley, Donald Pilkkin, and Herbert Johnson, its employees, for the reasons stated above.</p>			
By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.			
3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)			
UNITED STEELWORKERS OF AMERICA, AFL-CIO			
4a. Address (Street and number, city, State, and ZIP code)		4b. Telephone No. 421-5251	
1500 Creekview Park Building Pittsburgh, Pa. 15232			
5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)			
UNITED STEELWORKERS OF AMERICA, AFL-CIO			
6. DECLARATION			
I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.			
By <u>Box 265 Caspian, Michigan 49726</u> (Signature of representative or person filing charge)		Staff Representative (Title, if any)	
Address <u>Box 265 Caspian, Michigan 49726</u> (Telephone Number)		Date <u>March 6, 1968</u> (Date)	
WILLFULLY FAKE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)			



NATIONAL LABOR RELATIONS BOARD

REGION 30

Suite 230, Commerce Building, 744 North Fourth Street
 Milwaukee, Wisconsin 53203

Telephone 973-8600
 Extension 3675

March 11, 1963.

Robert A. Burns, Esq.
 c/o Quality Rubber Manufacturing Company Inc.
 801 Lake Shore Drive
 Waterfield, Michigan 49063

Re: Quality Rubber Manufacturing Company Inc.
 Case No. 30-~~Li-7-3~~

Gentlemen:

A ~~first~~ amended charge, copy enclosed, has been filed
 in the above-entitled matter and has been assigned for investigation
 to Dennis N. Selby, Attorney.
 Inquiries concerning this
 matter should be addressed to him.

Very truly yours,

George Squillace
 LABOR RELATIONS BOARD
 Regional Director

ocket No. 30-Li-7-3 OFFICIAL EXHIBIT NO. G-1(d)

Enclosure

REGISTERED MAIL

Return Receipt Requested

cc: Quality Rubber Manufacturing Company Inc.

Attn: William Tarsinic

801 Lake Shore Drive

Waterfield, Michigan 49063

Disposition { Identified _____
 Received _____

Rejected _____

In the matter of Quality Rubber
 Date 6-24-68 Witness Judith A. Zolakiewicz Reporter ForbesNo. Pages 1

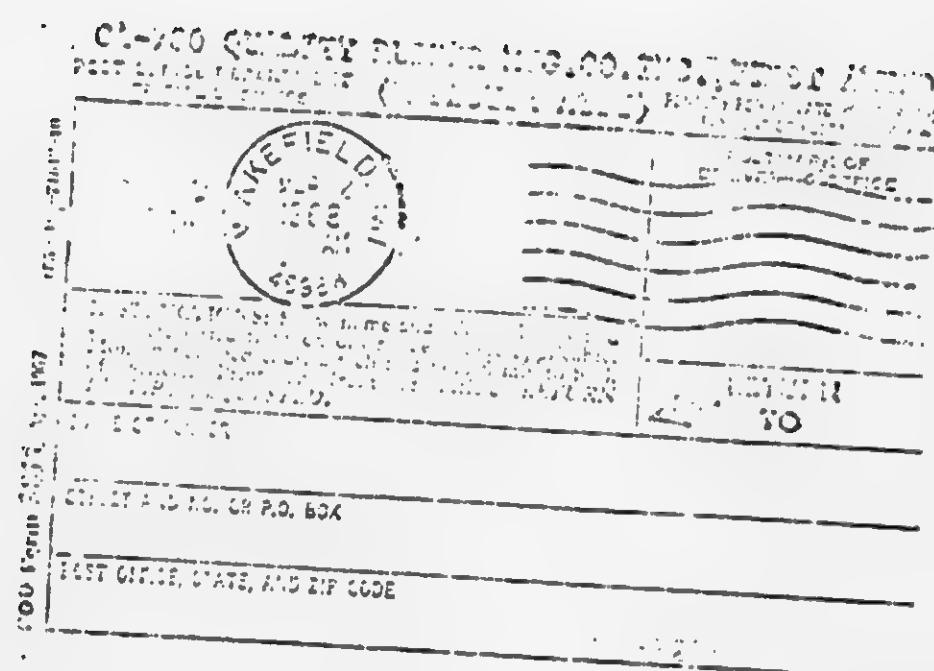
I certify that on the above date, the original ~~copy~~ of the ~~original~~ ^{Washington} statement
 together with a copy of the above-referred to first ^{Washington} amended charge were
 placed in a postage prepaid envelope marked registered, addressed to the
 addressee named above and deposited in the U. S. Mail.

Subscribed and sworn to before me
 this 12th day of March, 1963.

Judith A. Zolakiewicz

G. C. Exh. 1(d)

Designated Agent N. Jeanne Dixon



NATIONAL LABOR RELATIONS BOARD

Case No. 31-RC-776 Serial 1 Exhibit No. 84.2(A) - (G)

Disposition
Identified _____
Re classed _____
Rejected _____

In re matter of Rufus C. Forbes
Date 6-26-48 Witness Rufus C. Forbes

No. Pages 6
Bureau of Finance, U. S. Post Office Department
Washington, D. C.

TELETYPE OR TELETYPE ATTACHED PLAINLY

HOME PHM

ADDITIONAL INFORMATION OR COMMENTS

UNION EMPLOYEES OF AMERICA

Recently engaged in the construction of the UNITED STATES WORKS, Inc., at the McMurtry Mine, located in the State of Arizona, the Company has engaged me to act as an independent witness and to verify the following statement of Rufus C. Forbes, who is employed by the Company in the capacity of a foreman.

NAME: Rufus C. ForbesDATE: 6-26-48EMPLOYED BY: United States Works, Inc.DEPARTMENT: ConstructionSHIFT: DayJOB TITLE: ForemanRATE OF PAY: \$10.00 per daySINCE 6-15-48TIME IN USA: 6 yearsAGE: 30ADDRESS: 1212 N. 2nd Street, Phoenix, ArizonaCITY: PhoenixSTATE: AZ

PERSONS OR FIRM WITH WHOM PLAINLY

Name: George W. Gandy, President, Home Protection
Address: 1212 N. 2nd Street, Phoenix, Arizona

UNION EMPLOYEES OF AMERICA

By: Rufus C. Forbes
Title: Foreman
Signature: Rufus C. Forbes

To: George W. Gandy
Title: President
Signature: George W. Gandy

RECORDED AND INDEXED
BY: John J. O'Farrell DATE: 6-26-48

RECORDED AND INDEXED

JES

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Charles L Johnson HOME PHONE 113-4221
 ADDRESS P.O. Box 232, Beemer, Mich.
Street or Rural Route City State
or Province Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE UNDATED Charles L Johnson
 EMPLOYED BY: Quality Rubber Co.
(Company) (Plant)
 DEPARTMENT: Shift Afternoon
 JOB TITLE: Mill DATE HIRED 2/24/67 RATE OF PAY 1.90
 PRINTED IN U.S.A. G-C 2(D) Form 241

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Charles L Johnson HOME PHONE 113-4221
 ADDRESS P.O. Box 232, Beemer, Mich.
Street or Rural Route City State
or Province Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

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DATE UNDATED Charles L Johnson
 EMPLOYED BY: Quality Rubber Co.
(Company) (Plant)
 DEPARTMENT: Shift SHIFT Afternoon
 JOB TITLE: Mill DATE HIRED 2/24/67 RATE OF PAY 1.90
 PRINTED IN U.S.A. G-C 2(D) Form 241

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Charles L Johnson HOME PHONE 291-4221
 ADDRESS P.O. Box 232, Beemer, Mich.
Street or Rural Route City State
or Province Zip Code

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DATE UNDATED Charles L Johnson
 EMPLOYED BY: Quality Rubber Co.
(Company) (Plant)
 DEPARTMENT: Shift SHIFT Afternoon
 JOB TITLE: DATE HIRED RATE OF PAY
 PRINTED IN U.S.A. G-C 2(D) Form 241

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Gerry B. Lane HOME PHONE _____
 ADDRESS 2114 COTTON ST. WATFIELD, ALA.
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA
 AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 24 Feb 1968 Gerry B. Lane
 EMPLOYED BY Quality Rubber Co., Inc. #2
(Company) (Plant)
 DEPARTMENT: 6126 SHIFT: 6-12
 JOB TITLE: Packer DATE HIRED: 6/26/68 RATE OF PAY: per hr
 0-304-12-68 PRINTED IN U.S.A. GC 2(G) Form 500

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Glen P. Jackson HOME PHONE 224-1717
 ADDRESS Postal Box 522, White Plains, N.Y.
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA
 AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE UNDATED Glen P. Jackson
 EMPLOYED BY Quality Rubber Co., Inc. #2
(Company) (Plant)
 DEPARTMENT: 6126 SHIFT: Days
 JOB TITLE: Packer DATE HIRED: 6/26/68 RATE OF PAY: per hr
 0-304-12-68 PRINTED IN U.S.A. GC 2(H) Form 500

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Nels W. Luehrs HOME PHONE 224-1717
 ADDRESS 1021 Q St. W. Kalamazoo, Michigan 49007
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA
 AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE UNDATED Nels W. Luehrs
 EMPLOYED BY Quality Rubber Co., Inc. #2
(Company) (Plant)
 DEPARTMENT: 6126 SHIFT: Days
 JOB TITLE: Packer DATE HIRED: 6/26/68 RATE OF PAY: per hr
 0-304-12-68 PRINTED IN U.S.A. GC 2(I) Form 500

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Matt Mattson HOME PHONE -----
 ADDRESS 119 Best Rd. WAKEFIELD, MICH. 49963
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA
AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 2-25-68 Matt Mattson
 EMPLOYED BY: Quality Rubber MFG. Co. WAKEFIELD
(Company) (Plant)
 DEPARTMENT: ----- SHIFT: NIGHT
 JOB TITLE: Press Oper DATE HIRED 1-2-68 RATE OF PAY \$15.00
0-504-12-68 PRINTED IN U.S.A. G C 2(J) FORM 2(J)

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Vernon Mattson HOME PHONE -----
 ADDRESS P.O. Box 314 WAKEFIELD, MICH. 49963
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA
AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 2-24-68 Vernon Mattson
 EMPLOYED BY: Quality Rubber MFG. Co. WAKEFIELD
(Company) (Plant)
 DEPARTMENT: ----- SHIFT: -----
 JOB TITLE: Press Oper DATE HIRED 1-12-68 RATE OF PAY \$2.00
0-504-12-68 PRINTED IN U.S.A. G C 2(K) FORM 2(K)

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME George Matti HOME PHONE -----
 ADDRESS 312 Newell Rd. WAKEFIELD, MONTI
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA
AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 2-24-68 George Matti
 EMPLOYED BY: Quality Rubber Mfg. Co. WAKEFIELD
(Company) (Plant)
 DEPARTMENT: ----- SHIFT: -----
 JOB TITLE: ----- DATE HIRED ----- RATE OF PAY -----
0-504-12-68 PRINTED IN U.S.A. G C 2(L) FORM 2(L)

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME *Michael Ricetti* HOME PHONE 9-1159
 ADDRESS *312 Kensing Rd.*
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA
AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE *2/24/68*EMPLOYED BY: *Quality Rubber Co.* (Signature)
(Company) PlantDEPARTMENT: Shift: DayJOB TITLE *Cutter* DATE HIRED *1/1/68* RATE OF PAY *.96 per hr.*

0-SON-12-68

PRINTED IN U.S.A.

GC 2(M) Form 200

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME *Donald Morrison* HOME PHONE 327-2111
 ADDRESS *111 13th St. Philadelphia, Pa. 19107*
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA
AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE *2/24/68* *Donald Morrison*EMPLOYED BY: *Quality Rubber* (Signature)
(Company) PlantDEPARTMENT: Shift: DayJOB TITLE *Cutter* DATE HIRED *1/1/68* RATE OF PAY *.96 per hr.*

0-SON-12-68

PRINTED IN U.S.A.

GC 2(N) Form 200

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME *Douglas Twiggs* HOME PHONE 22-4111
 ADDRESS *R. 1 Box 90 BESSNER Mich. 49911*
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE *2-24-68* *Douglas Twiggs*EMPLOYED BY: *Quality Rubber Mfg. Co.* (Signature)
(Company) PlantDEPARTMENT: Shift: DayJOB TITLE *Cutter* DATE HIRED *1/1/68* RATE OF PAY *.96 per hr.*

0-SON-12-68

PRINTED IN U.S.A.

GC 2(N) Form 200

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Leonard Writers HOME PHONE 667-4234
 ADDRESS 8077 1/2 Box 32 BESEMER MICHIGAN 48121
Street or Rural Route City State Zip Code
or Province

UNITED STEELWORKERS OF AMERICA
 AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 2-27-68 Leonard Writers
 EMPLOYED BY: QUALITY RUBBER MFG CO. #2
(Company) (Plant)
 DEPARTMENT: SHIRT SHIFT: 2
 JOB TITLE: Press Opel DATE HIRED Oct 15 RATE OF PAY \$1.20/hr

O-50X-12-66

PRINTED IN U.S.A.

G C 2(P) Form 510

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME ROBERT J WHITBURN HOME PHONE 644-5331
 ADDRESS 309 EAST SILVER ST BESEMER MICH 48121
Street or Rural Route City State Zip Code
or Province

UNITED STEELWORKERS OF AMERICA
 AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 2-27-68 Robert J Whitburn
 EMPLOYED BY: QUALITY RUBBER MFG CO. #2
(Company) (Plant)
 DEPARTMENT: SHIRT SHIFT: 2
 JOB TITLE: Press Opel DATE HIRED Oct 15 RATE OF PAY \$1.20/hr

O-50X-12-66

PRINTED IN U.S.A.

G C 2(Q) Form 510

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Raymond Sibley HOME PHONE 231-2221
 ADDRESS 1763 Pickle Wakefield, Mich. 47441
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA
 AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE Feb 21 1967 Raymond Sibley
 EMPLOYED BY Quality Rubber Co. 2
(Company) (Plant)
 DEPARTMENT: SHIFT: 2
 JOB TITLE Press Mill DATE HIRED 1/7 RATE OF PAY .66
 0-30X-12-68 PRINTED IN U.S.A. FC 5 Form 200

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Donald Pitska HOME PHONE 237-1057
 ADDRESS 2210 Castile Rd. WAKEFIELD, Mich. 47441
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA
 AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 2/24/67 Donald Pitska
 EMPLOYED BY QUALITY RUBBER CO. WAKEFIELD
(Company) (Plant)
 DEPARTMENT: PRESS SHIFT: NIGHT
 JOB TITLE PRESS OPERATOR DATE HIRED 1/2/67 RATE OF PAY .62
 0-30X-12-68 PRINTED IN U.S.A. FC 6 Form 200

PRINTED IN U.S.A. FORM 200 (Rev. 1-64)

NAME Patricia A. Alm HOME PHONE 644-5222
 ADDRESS 601 Phila Ave. Wakefield, Mich. 47441
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA
 AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 1/24/67 Patricia A. Alm
 EMPLOYED BY Quality Rubber Co. Plant 1
(Company) (Plant)
 DEPARTMENT: SHIFT: 7 7:30
 JOB TITLE Inspector DATE HIRED 1/31/65 RATE OF PAY \$.55
 0-30X-12-68 PRINTED IN U.S.A. FC 7 Form 200

State of Michigan
County of Saginaw

GC-8

Official Exhibit No. 1

Come Mary Vibecin, who
after being first sworn, deposes and
states that,

1) I live at 30 Grant St., Ramsey,
Michigan phone 663-4521.

2) My husband, ^{Michael} works at Gorthy
Rubber Company. On Sunday, February 25,
1968, Glen Lefever, a friend
friend of my husband's came to our
house several times.

3) Glen asked my husband if he would
sign a card to join the Steelworkers
Union. ^{Glen M.V.} He said he was not satisfied
with the money he was getting and he
said he'd have to get more in order to
live. Mike said he wouldn't go along
with this because he had such a dif-
ficult time getting the job and hadn't
worked since 1962, when he was
crushed against a wall in a mine. Mike
joined union dues for 27 years and I
believe held office.

4) I told Glen that I want him
to have anything to do with the Union
because of the difficulty he had getting
a job. Mike is earning \$33.94 per

NATIONAL LABOR RELATIONS BOARD

Case No. 21-RC-2745 OFFICIAL EXHIBIT NO. 168

Disposition

Received

Rejected

The writer of

in 1968 witness of the signature of this

Pages 4

Bureau of Fisheries, U. S. Fish Office Department
Washington, D. C.

Page 2

week which we didn't have for a long time.

5) I told Glen that Duke was crippled and had trouble getting a job. Glen said that the Union would protect him. Duke said he knew all about unions, but they didn't even ~~try~~ ^{try} to stand Duke a card or help him with his case against the Montreal mine. Glen told Duke he was the only one not to sign. Duke said ~~that~~ was the way it would have to be but he was in no position to be so foolish.

6) The next day, Monday, February 26, I went to pick up the car at the plant before noon. I went into the plant to get insurance forms. Bill Tersine was there. He said, "I'm very disappointed. I understand Duke has been混ing with these fellows who have been talking union. I just hope it's not true, I might have to let him go if he is the instigator." I asked him what he had against unions. He said nothing, they eventually will have one here. If you give me a moment, I'll explain why we're in no position to do such a thing; Duke told me. He said

Day 3

they just started at the plant and they had someone marching to pay for and he definitely wished they had gone through proper channels and seen him first. But they were working around and all these activities were going on during working hours and it was just a union shop so I couldn't blame him for that. I said I'd talk to Mike but that I thought he had the wrong person we had too much to do.

7) I believe I called Bill Tressman the day before, on February 25, Sunday, after we had a run-in with some employees at Boettcher gas station. I told him that if it was any consolation to Bill, my husband didn't know anything to do with the group of employees who were involved in union activities at the plant. Bill said he heard rumors about a union at Quality in Greeleyfield but he didn't believe them. I told him I didn't want my husband involved w/ Bill said he was there to say nothing more, if they wanted to work they could. He said he

Page 4

the high ~~watered~~ overheat, but that I
couldn't understand it because it was
too involved. He said they should
have waited a couple of years before they
organized and had they waited the wages
might have gone up to possibly \$2.65 per
hour this summer.

8. That Mike was not home when I
called Bill, but I told him the next
day what Bill told me on the phone. Mike
said he felt a loyalty to both the Company
and the Union, but that maybe he should
have told Bill.

9. I have read this handwritten state-
ment of 4 pages and it is true and
correct to the best of my knowledge and
belief.

Mary Vilenica
MARY VILENICA

Subscribed and sworn to before me
this 14th day of March, 1968

Dennis M. Alli
Attala Co., Miss.

b6 8

WALTER J. DURKE
SECRETARY-TREASURER

I. W. ABEL
PRESIDENT

JOSEPH P. MOLONY
VICE PRESIDENT

United Steelworkers of America

GLENN E. PETERSON
DIRECTOR

DISTRICT 33
609 PROVIDENCE BUILDING
Beloit, Illinois, 55802

P. O. BOX 293
CASPAN, MICHIGAN, 49915
PHONE IRON RIVER 265-4324

PHONE 722-2862

NATIONAL LABOR RELATIONS BOARD

February 26, 1968 File No. 14716 OFFICIAL EXHIBIT NO. 669

Disposition	Identified _____
	Received <input checked="" type="checkbox"/> ✓
	Accepted _____
	Date 6/26/68 Witness _____ Reporter _____
No. Pages 1	

Quality Rubber Manufacturing Company, Inc.
801 Lake Shore Drive
Wakefield, Michigan 49968

In the matter of Quality Rubber

Date 6/26/68

Witness _____

Reporter F. G. S.

Gentlemen:

Please be advised that the United Steelworkers of America, AFL-CIO-CIO, has been designated as the collective bargaining representative of, and has received signed authorization cards from the majority of your employees in the following unit: (all production and maintenance employees at your Wakefield, Michigan Plant No. 2, excluding office, clerical, and professional employees, guard and supervision, as defined in the Labor Management Relations Act).

Demand is hereby made, that you recognize the United Steelworkers of America as the sole and exclusive bargaining representative of the employees of such bargaining unit, and that you promptly meet with the United Steelworkers of America for the purpose of bargaining with respect to wages, hours, and other terms and conditions of employment.

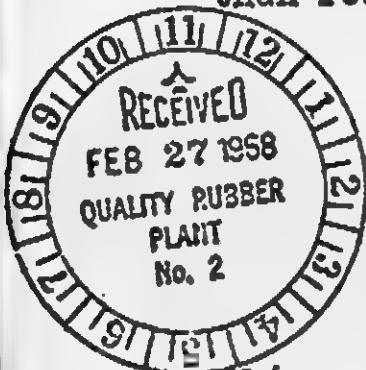
You are, of course, required by law to refrain from recognizing, dealing with, or entering into a contractual relationship with any other labor organization.

We hereby offer to submit the authorization cards, signed by your employees, to a representative of the Federal Mediation and Conciliation Service, in order that our majority status in the bargaining unit described above may be verified.

We shall expect to receive a reply to this letter no later than four working days from the date hereof.

Yours very truly,
UNITED STEELWORKERS OF AMERICA, AFL-CIO-CIO

Joseph Soltis
Staff Representative



cc: Mr. Glenn Peterson
Director, District 33

J.S./cg

Quality Rubber Manufacturing Company, Inc.

Plant No. 2

Rubber Products For Industry

O-RINGS
SEALS
GASKETS

801 LAKE SHORE DRIVE
WAKEFIELD, MICHIGAN 49968
AREA CODE 906 224-9081

MOLDED RUBBER
EXTRUDED RUBBER
DIE CUT RUBBER

February 27, 1968

United Steelworkers of America
P.O. Box 295
Caspian, Michigan 49915

Attention Mr. Joseph Soltis

Gentlemen:

In reply to your letter of February 26, 1968, which we received today, the following is a list of our employees:

Genevieve Salo	Kathlyn Auvinen
Nabel Zielinski	✓ Patricia Juopperi
Verna Morrison	Alice Koivula
Florence Bober	✓ Michael Vilencia
Dorothy Lepinski	✓ Robert Whitburn
Mary Anderson	✓ Taisto Hendrickson

✓ Zanar Johnson
✓ Matt Mattson
✓ Clarence Johnson
✓ David Swearingen
✓ Albert Ohman
✓ Lee Carlson

This firm has never refused to bargain in respect to wages, hours, and other terms and conditions of employment. We are ready to bargain with any organization whom shown that said organization has been designated as the collective bargaining representative of our employees.

Very truly yours,

QUALITY RUBBER MFG. CO., INC.

NATIONAL LABOR RELATIONS BOARD

Docket No. 30-CB-751 OFFICIAL EXHIBIT NO. 6C-10

Disposition	Handled
	Received
	Accepted

William Tersinar, plant manager

William Tersinar

To the writer of bjh Quality Rubber
Date 2/26/68 Witness Forbes

No. Pages 1

Bureau of Finance, U. S. Post Office Department
Washington, D. C.

6C 10

WALTER J. BURKE
SECRETARY-TREASURER

S. W. ABEL
PRESIDENT

JOSEPH P. MOLONY
VICE PRESIDENT

United Steelworkers of America

LENN E. PETERSON
DIRECTOR

DISTRICT 33
609 PROVIDENCE BUILDING
Duluth Minnesota, 55802
PHONE 722-2869

P. O. BOX 295
CASPION, MICHIGAN, 49013
PHONE IRON RIVER: 265-4324

March 15, 1968

Quality Rubber Manufacturing Company, Inc.
Plant No. 2
801 Lake Shore Drive
Wakefield, Michigan 49968

Gentlemen:

This is in reply to your letter of February 27, 1968, relative to a meeting for the purpose of agreement that the United Steelworkers of America, AFL-CIO has been designated by the majority employees of Quality Rubber Manufacturing Company, Inc., as the collective bargaining representative for the purpose of negotiating an agreement for wages, hours, and other terms and conditions of employment.

The Union offers to meet with the Company on March 25, 1968 at the Company Office in Wakefield, Michigan.

Will you please notify for the purpose of this letter?

Very truly yours,

Joseph Soltis
Joseph Soltis, Representative
United Steelworkers of America, AFL CIO

NATIONAL LABOR RELATIONS BOARD

JS/cg

cc: Glenna F. Princeton
Director, Michigan 22

ai:

Docket No. 30-CA-784 OFFICIAL EXHIBIT NO. GC-11

Disposition	Identified _____
	Revised <input checked="" type="checkbox"/>
	Rejected _____

In the matter of Quality Rubber
Date 3-16-68 Witness J. S. Soltis Reporter Forches
No. Pages 1

Bureau of Placem. U. S. Post Office Department
Washington, D. C.

Quality Rubber Manufacturing Company, Inc.

Plant No. 2

O-RINGS
SEALS
GASKETS

Rubber Products For Industry

801 LAKE SHORE DRIVE
WAKEFIELD, MICHIGAN 49968
AREA CODE 906 224-9061

MOLDED RUBBER
EXTRUDED RUBBER
DIE CUT RUBBER

March 18, 1968

United Steelworkers of America
P.O. Box 295
Caspian, Michigan 49915

Attention Mr. Joseph Soltis

Gentlemen:

In reply to your letter of March 15, 1968, we see no reason why we cannot meet with you on March 25, 1968, in our office at 9:30 A.M. We hope the time stated meets with your approval.

Very truly yours,

QUALITY RUBBER MFG. CO., INC.

William Tersinar

William Tersinar, plant manager

bjc

Registered mail
return receipt

NATIONAL LABOR RELATIONS BOARD

Docket No. 20-CH-780 OFFICIAL EXHIBIT NO. 66-12

Disposition	Identified _____
	Serialized <input checked="" type="checkbox"/>
R.R. Issd _____	

In the matter of Quality Rubber
Date 6-26-68 Witness F. H. F.
No. Pages 1

Bureau of Finance, U. S. Post Office Department
Washington, D. C.

GC 12

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME MATT MATTISON HOME PHONE _____
 ADDRESS 119 Best Rd. Wakefield Mich. 49968
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 2-25-68 Matt Mattison
 EMPLOYED BY Quality Rubber Mfg. Co. (Signature) Wakefield (Company) (Plant)
 DEPARTMENT: Night SHIFT: Night
 JOB TITLE: Press Oper DATE HIRED 1-2-68 RATE OF PAY \$19.00

0-500-12-68

PRINTED IN U.S.A.

Form 340

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Verner Mattison HOME PHONE _____
 ADDRESS R 1 Box 214 Wakefield Mich. 49968
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA
AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 2-29-68 Verner Mattison
 EMPLOYED BY QUALITY RUBBER MFG. CO. (Signature) PLANT #7 Wakefield (Company) (Plant) Mich
 DEPARTMENT: SHIFT:
 JOB TITLE: Press Oper DATE HIRED 6-11-62 RATE OF PAY \$2.00

0-500-12-68

PRINTED IN U.S.A.

Form 340

NATIONAL LABOR RELATIONS BOARD

Docket No. 30-CA-71 OFFICIAL EXHIBIT NO. CC-13-A thru 13J

Disposition	Identified
	Received <input checked="" type="checkbox"/>
Rejected	<input type="checkbox"/>

In the matter of Quality Rubber
 Date 6-26-68 witness S. J. S. Reporter

No. Pages 10

X
PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Patricia Ann HOME PHONE 6951
 ADDRESS 601 Abola Ave. CITY WAKEFIELD, STATE Mich. ZIP CODE 47968
Street or Rural Route City State Zip Code
or Province

UNITED STEELWORKERS OF AMERICA
 AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE February 24, 1968 Patricia Ann (Signature)

EMPLOYED BY Quality Rubber Co. PLANT II
(Company) (Plant)

DEPARTMENT: SHIFT: 7 - 3:30

JOB TITLE: Inspector DATE HIRED 1/31/68 RATE OF PAY \$1.60
per hr.

O-SON-12-68

PRINTED IN U.S.A.

Form 540

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME GARY B. Laine HOME PHONE -----
 ADDRESS 2104 CASTLE RD. CITY WAKEFIELD, STATE Mich. ZIP CODE 47968
Street or Rural Route City State Zip Code
or Province

UNITED STEELWORKERS OF AMERICA
 AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 24 Feb 1968 Gary B. Laine (Signature)

EMPLOYED BY Quality Rubber Co., Inc. PLANT II
(Company) (Plant)

DEPARTMENT: SHIFT: -----

JOB TITLE: Pressman DATE HIRED 6/7 RATE OF PAY \$1.60/hr.

O-SON-12-68

PRINTED IN U.S.A.

Form 540

cc 138

X PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Thos L. Henderickson HOME PHONE 67-8331

ADDRESS 205 Leep St. Bessemer Street or Rural Route City State or Province 48211 Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 2-24-68

Thos L. Henderickson

(Signature)

EMPLOYED BY: Quality Rubber Mfg Co. #2

(Company)

(Plant)

DEPARTMENT: SHIFT: 2

JOB TITLE: Press Op DATE HIRED: 11/11 RATE OF PAY: 1.80

6-30M-12-68

PRINTED IN U.S.A.

Form 540

X PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Clarence T. Johnson HOME PHONE 467-4421

ADDRESS P.O. Box 230 Bessemer Michigan Street or Rural Route City State or Province 48211 Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE: Clarence T. Johnson

(Signature)

EMPLOYED BY: Quality Rubber Co.

(Com. Any)

(Plant)

DEPARTMENT: SHIFT: Afternoon

JOB TITLE: Mill DATE HIRED: 6-9-68 RATE OF PAY: 1.90

6-30M-12-68

PRINTED IN U.S.A.

Form 540

GC 13-

X PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME *James A Johnson* HOME PHONE *663-1119*
 ADDRESS *R-1 Box 224 Presswood Mich, Mich*
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE *January 1968*

(Signature)

EMPLOYED BY *Quality Rubber Company*
(Company) (Plant)

DEPARTMENT *Mills* SHIFT *Afternoon*

JOB TITLE *Mill* DATE HIRED *7/1/67* RATE OF PAY *.90*

0-301-12-68

PRINTED IN U.S.A.

Form 540

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME *Herbert D Johnson* HOME PHONE *22-957-87*
 ADDRESS *R-1 Box 11 Wakefield Mich* *49968*
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE *Herbert D Johnson*

(Signature)

EMPLOYED BY *Quality Rubber Mfg Co Inc*
(Company) (Plant)

DEPARTMENT *Mills* SHIFT *Afternoon*

JOB TITLE *Pressman* DATE HIRED *7/1/67* RATE OF PAY *.90*

0-301-12-68

PRINTED IN U.S.A.

Form 540

LC 13D

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME George Monti HOME PHONE 9-5559
 ADDRESS 312 Karsking Rd. WAKEFIELD W02L1
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA
 AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 24 Feb George Monti
(Signature)

EMPLOYED BY: Quality Rubber Mfg. Company 2
(Company) (Plant)

DEPARTMENT: SHIFT: 1st

JOB TITLE: Press Op. DATE HIRED Jan RATE OF PAY 15.00

O-501-12-63

PRINTED IN U.S.A.

Form 540

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Raymond Monti HOME PHONE 9-5559
 ADDRESS 312 Karsking Rd. Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA
 AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 2/24/68 Raymond Monti
(Signature)

EMPLOYED BY: Quality Rubber Co. Plant 2
(Company) (Plant)

DEPARTMENT: SHIFT: Day

JOB TITLE: Caster DATE HIRED Jan RATE OF PAY 14.90 per hr.

O-501-12-63

PRINTED IN U.S.A.

Form 540

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Raymond Sibley HOME PHONE 234-3771
 ADDRESS 1303 Pine St. Watertown, Mich. 49448
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CIO

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE Feb. 24, 1968 Raymond Sibley
(Signature)

EMPLOYED BY: Quality Public 2
(Company) (Plant)

DEPARTMENT: SHIFT: 2

JOB TITLE: Press Man DATE HIRED 17 RATE OF PAY 160

O-SOM-12-68

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Form 540

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Douglas Twiggs HOME PHONE 447-4111
 ADDRESS R. 1 Box 9a BESSEMER Mich. 49911
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CIO

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 2-24-68 Douglas Twiggs
(Signature) Plant No 2

EMPLOYED BY: Quality Rubber Mfg Co. Watertown, Mich.
(Company) (Plant)

DEPARTMENT: SHIFT: 1

JOB TITLE: Press Oper. DATE HIRED Nov 67 RATE OF PAY \$1.80 hr.

O-SOM-12-68

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Form 540

6C 13F

X

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Veron Marion HOME PHONE 229-5528
 ADDRESS P.O. Box 3750 CITY Wakefield STATE Mass. ZIP CODE 01880
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer, covering all such matters.

DATE 2/24/68 Veron Marion
 (Signature)EMPLOYED BY: Quality Rubber
 (Company) (Plant)DEPARTMENT: Presses SHIFT: NightJOB TITLE: Presser DATE HIRED 1/68 RATE OF PAY 1.65

G-504-12-68

PRINTED IN U.S.A.

Form 540

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Donald P. Kka HOME PHONE 224-2652
 ADDRESS 2219 CASTLE Rd. CITY WAKEFIELD STATE MASS. ZIP CODE 01880
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer, covering all such matters.

DATE 2/28/68 Donald P. Kka
 (Signature)EMPLOYED BY: QUALITY RUBBER CITY WAKEFIELD
 (Company) (City)DEPARTMENT: Presses SHIFT: NIGHTJOB TITLE: Presses OPERATE HIRED 1/2/68 RATE OF PAY 1.90

G-504-12-68

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Form 540

GC 13 G

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME: Leonard Westens HOME PHONE 663-4424ADDRESS R. 0077, 1, Box 32, BESSMER, MICHIGAN 44911
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 1-21-68 Leonard Westens
(Signature)EMPLOYED BY: QUALITY RUBBER MFG CO. #2
(Company) (Plant)DEPARTMENT: SHIRT SHIFT: DAYSJOB TITLE: Press Op DATE HIRED Oct 15 RATE OF PAY \$1.60 PER HR

O-304-12-68

PRINTED IN U.S.A.

Form 540

X PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME ROBERT J WHITBURN HOME PHONE 664-5381ADDRESS 309 EAST SILVER ST BESSMER MICH 44911
Street or Rural Route City State or Province Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 2-21-68 Robert J Whitburn
(Signature)EMPLOYED BY: QUALITY RUBBER MFG Co. #2
(Company) (Plant)DEPARTMENT: SHIFT: 2JOB TITLE: Press Op DATE HIRED Oct 15 RATE OF PAY \$1.80/hr

O-304-12-68

PRINTED IN U.S.A.

Form 540

X
PLEASE USE TYPEWRITER OR PRINT PLAINLYNAME Kachayev, Stanislav HOME PHONE 942-4690ADDRESS 2, R. I. Hwy. 225 Bethel Maine
Street or Rural Route City State Zip Code
or Province

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE Feb 24, 1968 Kachayev, Stanislav
(Signature)EMPLOYED BY: Quality Rubber Co. (Company) Plant 2 (Plant)DEPARTMENT: Shift: NightJOB TITLE: Processor DATE HIRED 1/14/68 RATE OF PAY 160

0-50M-12-68

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Form 540

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME George W. Golombek HOME PHONE 274-2201ADDRESS 507 Ashlund Ave. Whitefish Mich. 49968
Street or Rural Route City State Zip Code
or Province

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE Feb 24, 1968 George W. Golombek
(Signature)EMPLOYED BY: Quality Rubber Co. (Company) Plant 2 (Plant)DEPARTMENT: Shift: NightJOB TITLE: Processor DATE HIRED 1/6/68 RATE OF PAY 1.80

0-50M-12-68

PRINTED IN U.S.A.

Form 540

16-75

PLEASE USE TYPEWRITER OR PRINT PLAINLY.

NAME Glen P. L. Larson HOME PHONE 361-1511ADDRESS Route 1, Box 502, Wakefield, Michigan Zip Code 49422
Street or Rural Route City Wakefield State Michigan Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 10-10-63Glen P. L. Larson

(Signature)

EMPLOYED BY Quality Rubber Mfg. Co., Inc. Plant # 2
(Company) (Plant)

DEPARTMENT:

SHIFT: Days

JOB TITLE Pressman DATE HIRED 7-10-63 RATE OF PAY \$1.87 per hr.

O-501-32-63

PRINTED IN U.S.A.

Form 540

PLEASE USE TYPEWRITER OR PRINT PLAINLY

NAME Nels W. Luoma HOME PHONE 224-1757ADDRESS A-1 #1 Box 21, Wakefield, Michigan Zip Code 49422
Street or Rural Route City Wakefield State Michigan Zip Code

UNITED STEELWORKERS OF AMERICA

AFL-CIO - CLC

I hereby request and accept membership in the UNITED STEELWORKERS OF AMERICA, and of my own free will hereby authorize the United Steelworkers of America, its agents or representatives, to act for me as a collective bargaining agency in all matters pertaining to rates of pay, wages, hours of employment, or other conditions of employment, and to enter into contracts with my employer covering all such matters.

DATE 10-10-63Nels W. Luoma

(Signature)

EMPLOYED BY QUALITY RUBBER MFG. CO., INC. Plant # 2
(Company) (Plant)

DEPARTMENT:

SHIFT: Days

JOB TITLE Pressman DATE HIRED July 10, 1963 RATE OF PAY \$1.90 per hr.

O-501-32-63

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Form 540

U.S. GOVERNMENT PRINTING OFFICE: 1963 10-1250

88 5V

Employees per 2/20/68

1. Verner Mattson
2. Michael Silencia
3. Raymond Monti
4. Glen Le Gassa
5. Herbert Johnson (Curly)
6. Nels Luoma
7. Anton Thorson
8. Clarence Johnson
9. Robert Whitburn
10. George Golenbeski
11. Douglas Twiggs
12. Taisto Hendrickson
13. Eanar Johnson
14. George Monti
15. Matt Mattson
16. David Swearingen
17. Donald Pikkala
18. Ray Sibley
19. Leonard Westeen
20. Gary Laine
21. George Grant
22. John Tersinar
23. Albert Ohman
24. Lee Carlson
25. Genevieve Salo
26. Nabel Zielinski
27. Verna Morrison
28. Florence Beber
29. Dorothy Lepinski
30. Mary Anderson
31. Kathryn Auvinen
32. Patricia Juopperi
33. Alice Koivula
34. Barbara Carlson (Office)

NATIONAL LABOR RELATIONS BOARD

Docket No. 2014-780 OFFICIAL EXHIBIT NO. GC-14

Disposition	<input type="checkbox"/> Identified <input checked="" type="checkbox"/> Received ✓ <input type="checkbox"/> Rejected
-------------	--

In the presence of John P. Peabody
 Date 2/20/68 witness Robert Forbes

No. pages 1
 Bureau of Finance, U. S. Post Office Department
 Washington, D. C.

GC 14

Employees per 2/22/68

1. Verner Mattson
2. Michael Vilencia
3. Raymond Monti
4. Glen Le Gasse
5. Nels Luoma
6. Anton Thorson
7. Clarence Johnson
8. Robert Whitburn
9. George Golejewski
10. Douglas Twiggs
11. Taisto Hendrickson
12. Eanar Johnson
13. George Monti
14. Matt Mattson
15. David Swearingen
16. Leonard Westeen
17. Gary Laine
18. George Grant
19. John Tersinar
20. Albert Ohman
21. Lee Carlson
22. Genevieve Salo
23. Mabel Zielinski
24. Verna Morrison
25. Florence Beber
26. Dorothy Lepinski
27. Mary Anderson
28. Kathlyn Auvinen
29. Patricia Juopperi
30. Alice Koivula
31. Barbara Carlson (Office)

NATIONAL LABOR RELATIONS BOARD

Docket No. 3C-GG-786 OFFICIAL EXHIBIT NO. CC-15

Disposition	Identified _____
	Received <input checked="" type="checkbox"/>
	Rejected _____

In re matter of Quality Rubber
 Date 6-26-68 Witness J. C. H. Reporter L. H. C.
 No. Pages 1

Bureau of Finance, U. S. Post Office Department
 Washington, D. C.

CC 15

Employees per 2/7/68

1. Michael Vilencia
2. Anton Tjerson
3. Clarence Johnson
4. Robert Whitburn
5. Taisto Hendrickson
6. Einar Johnson
7. Matt Mattson
8. David Swearingen
9. George Grant
10. John Tersinar
11. Albert Ohman
12. Lee Carlson
13. Genevieve Salo
14. Mabel Zielinski
15. Verna Morrison
16. Florence Beber
17. Dorothy Iepinski
18. Mary Anderson
19. Kathryn Auvinen
20. Patricia Juopperi
21. Alice Koivula
22. Barbara Carlson (Office)

Gary Laine did not show on dayshift 2/26/68
 George Golembeski did not show on nightshift 2/26/68
 but called in on 2/29/68 and asked if he still had
 his job.

NATIONAL LABOR RELATIONS BOARD

Docket No. 36 CR-736 OFFICIAL EXHIBIT NO. 6C-16

Disposition	Rejected
	✓

6C 16

In the matter of Quality Rubber
 Date 4-24-68 witness John J. Sestak
 No. Pages 1

Bureau of Finance, U. S. Postal Office Department
 Washington, D. C.

General Counsel's Exhibit 17

Paragraph 7 of pretrial affidavit
of William Terciner

(Read into record at p. 335)

"7. About 6-7 p.m., Sunday evening, February 25, I received a phone call from Mrs. Michael Vilencia whose husband works at the plant. She said that some of the boys were threatening her husband. She said that her husband didn't have anything to do with the union organization in the plant. I don't remember saying I hoped that I didn't have to close the plant to the ship instead. I did not say that the employees should have waited a couple of years before they organized. I didn't say that wages at the plant might possibly have gone up to \$2.65 by the summer.

ANY EMPLOYEE WHO CAN NOT SHOW FOR WORK, IS REQUIRED TO CALL THIS OFFICE OR HAVE SOMEONE CALL, WITHIN 3 - THREE - WORKING DAYS. IF NO MESSAGE HAS BEEN RECEIVED BY SUCH TIME, THE EMPLOYEE WILL BE REMOVED FROM THE PAYROLL.

MANAGEMENT

NATIONAL LABOR RELATIONS BOARD
Docket No. 30-CAB-738 OFFICIAL EXHIBIT NO. R-1

Disposition	Identified _____
	Received <input checked="" type="checkbox"/>
	Rejected _____

In the matter of Quality Rubber
Date 8-14-68. Witness Whitney A. C. Forbes
No. Pages 1
Bureau of Finance, U. S. Post Office Department
Washington, D. C.

'WHITBURN

No. 14

14

Robert Flitchee

WEEK ENDING

5/11/68

R2

NO. 14 WK. ENDING 5/11/68 19

NAME Robert Fetherston

NATIONAL LABOR RELATIONS BOARD

Docket No. 30-CA-786 OFFICIAL EXHIBIT NO. R-2

Identifies

Position: ICM

CHECK NO. 1000 RECEIVED 10-10-68

Rejected

In the matter of Quality Rubber

DATE 8-14-68 WITHIN 4 MONTHS FROM THE EXPIRATION

Mr. BROWN / i

Report of Survey, U.S. Boundary.

**DEPARTMENT OF POSTAL SERVICES, U. S. POST OFFICE DEPARTMENT
Washington, D. C.**

W. B. C.

— 1 —

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

UNITED STEELWORKERS OF AMERICA, AFL-CIO,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

)
No. 23,551

Respondent,

and

QUALITY RUBBER MANUFACTURING COMPANY, INC.,

Intervenor.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

)
No. 23,709

QUALITY RUBBER MANUFACTURING COMPANY, INC.,

Respondent.

ON PETITION TO REVIEW AN ORDER OF THE NATIONAL LABOR
RELATIONS BOARD AND PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF OF UNITED STEELWORKERS OF AMERICA, AFL-CIO

OF COUNSEL:

BERNARD KLEIMAN
10 South LaSalle Street
Chicago, Illinois 60603

BREDHOFF, GOTTESMAN & COHEN
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036

JAMES D. ENGLISH
Assistant General Counsel
United Steelworkers of America
1500 Commonwealth Building
Pittsburgh, Pennsylvania 15222

Attorney for United Steel-
workers of America, AFL-CIO



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TABLE OF CITATIONS

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* <u>Preston Products Co., Inc.</u> , 158 NLRB 322 (1966), modified in relevant part sub. nom. <u>UAW v. NLRB (Preston Products Co.)</u> , 392 F. 2d 801 (D.C. Cir., 1967)	26, 33
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* <u>Steelworkers v. NLRB (H. K. Porter Co.)</u> , 389 F. 2d 295 (D.C. Cir., 1967)	19, 20
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STATUTES

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MISCELLANEOUS

This case has not been before
— this Court previously. —

— The decision below is reported
at 174 NLRB No. 102.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STEELWORKERS OF AMERICA, AFL-CIO,)
Petitioner,) No. 23,551
vs.)
NATIONAL LABOR RELATIONS BOARD,)
Respondent.)
and)
QUALITY RUBBER MANUFACTURING COMPANY, INC.,)
Intervenor.)
NATIONAL LABOR RELATIONS BOARD,)
Petitioner,) No. 23,709
vs.)
QUALITY RUBBER MANUFACTURING COMPANY, INC.,)
Respondent.)

ON PETITION TO REVIEW AN ORDER OF THE NATIONAL LABOR
RELATIONS BOARD AND PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF OF UNITED STEELWORKERS OF AMERICA

STATEMENT OF ISSUES
PRESENTED FOR REVIEW

The United Steelworkers of America, Petitioner in No. 23,551, hereby presents the following issues for review:

1. Did the National Labor Relations Board err in failing to order that the Quality Rubber Manufacturing Company, Inc. (hereinafter the "Company") compensate its employees for benefits they would have received had the Company not unlawfully refused to bargain?
2. Did the National Labor Relations Board err in failing to require that the remedial notice be mailed to all employees now working at the Employer's plant or working at that plant at the time the campaign was in progress?
3. Did the National Labor Relations Board err in failing to order that the Company grant the Union an opportunity to reply to the Company's coercive threats and interrogations on Company property?
4. Did the National Labor Relations Board err in failing to order the Employer to grant the National Labor Relations Board, through one of its agents, an opportunity to enter upon Company property and indicate to the employees their rights under the National Labor Relations Act and answer questions from said employees?

STATEMENT OF THE CASE

A. The Litigation

On May 21, 1969, the National Labor Relations Board issued its Decision and Order in this case against the Quality Rubber Manufacturing Company, Inc. (hereinafter sometimes "Employer" or "Company"). Subsequently, on September 30, 1969, it issued a Supplemental Decision and Order in light of the Supreme Court's intervening decision in N.L.R.B. v. Gissel Packing Company, 395 U.S. 575 (1969).

On October 15, 1969, the United Steelworkers of America (hereinafter the "Union" or "Steelworkers") filed its Petition for Review with this Court (No. 23,551). Thereafter, on November 25, 1969, the NLRB sought enforcement of its order (No. 23,709). These cases were subsequently consolidated for purposes of appeal by order of this Court.

The Union will devote this brief solely to the issues raised by its Petition for Review since it believes that the Company is clearly guilty of the unfair labor practices alleged.

On March 1, 1968, the Union filed charges against the Company alleging that it had violated Sections 8(a)(1), (3) and (5) of the National Labor Relations Act. The charges were amended on March 11 and 26, 1968. The General Counsel of the NLRB issued a complaint on April 30, 1968 and Trial Examiner Sidney Goldberg held hearings on June 26 and 27 and again on August 14, 1968.

Thereafter, on December 6, 1968, the Trial Examiner issued his decision finding the Employer guilty of discharging 11 employees for concerted or union activities and refusing to bargain in good faith and committing various other unfair labor practices. The Trial Examiner recommended the standard Board remedies including a cease and desist order, notice posting, reinstatement, backpay and a bargaining order (JA 26-29).

The Employer filed exceptions to the Trial Examiner's decision and the Union filed cross exceptions. The Union's cross exceptions requested the Board to provide for the following additional remedies:

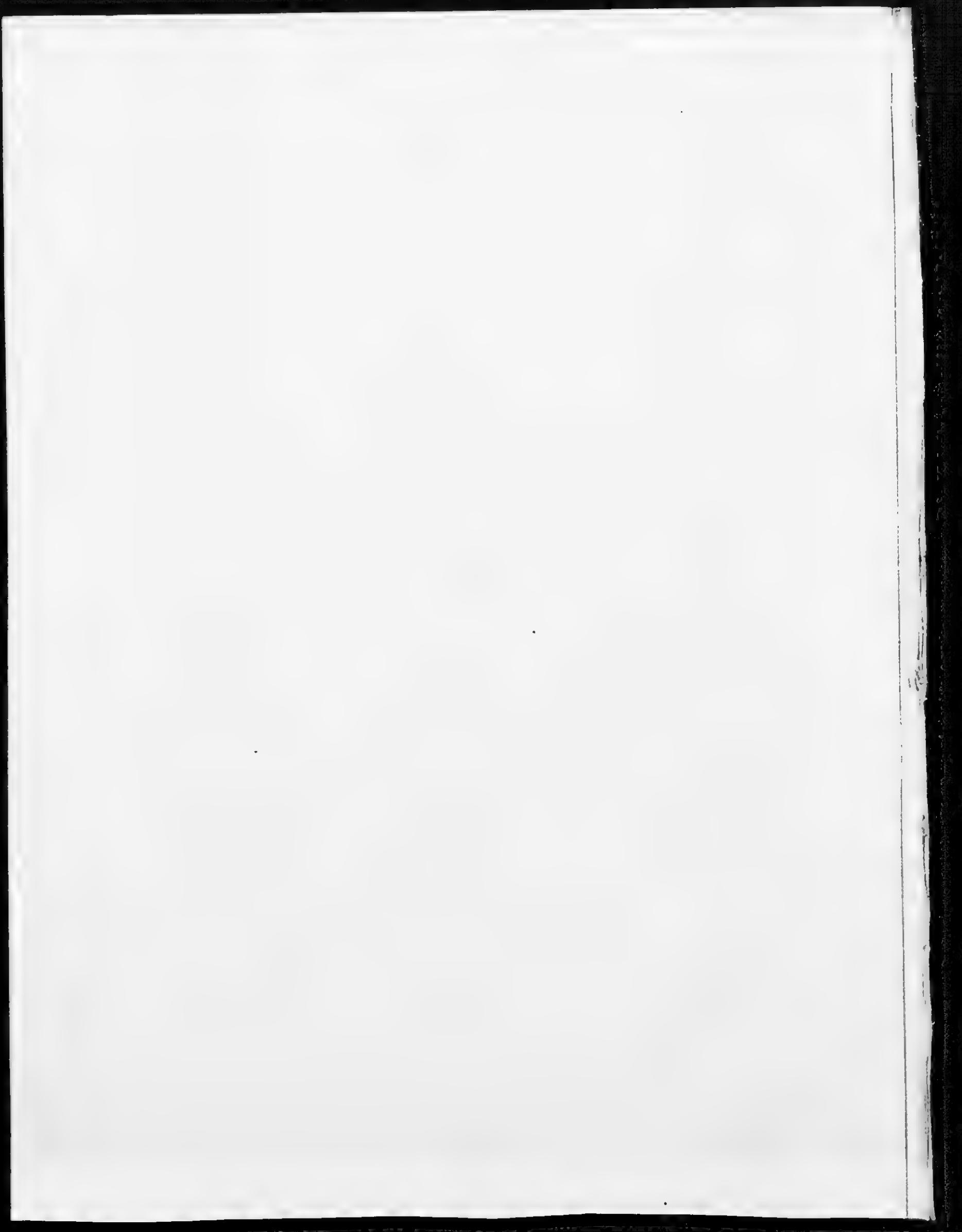
1. Compensation to employees for benefits they would have received had the Company not unlawfully refused to bargain.
2. Mailing of remedial notice to all employees now working at the Employer's plant or working at that plant at the time the campaign was in progress.
3. Affording the Union an opportunity to reply to the Employer's coercive threats and interrogations on company property, and
4. Affording the National Labor Relations Board an opportunity to enter upon company property,

indicate to the employees their rights under the National Labor Relations Act and answer questions from the employees.

The May 21, 1969 Board Decision rejected the exceptions of both the Employer and the Union. The text of the Board's rejection of the Union exceptions is contained in footnote 4 of its Decision (hereinafter "Board footnote 4") and reads as follows:

The Charging Party excepts to the Trial Examiner's failure to recommend that the Respondent be ordered to make employees whole for losses suffered as a result of the Respondent's refusal to bargain; mail copies of the notice to employees; and permit the Union to address employees, and a Board agent to read the notice and answer questions, on company property. We deem it inappropriate in this case to depart from our existing policy with respect to remedial orders in cases involving violations of Section 8(a)(5), or violations of Section 8(a)(3) and (1) where, as here, the record affords insufficient basis for additional remedial action. We therefore find no merit in these exceptions. See, Monroe Auto Equipment Company, Hartwell Division, 164 NLRB No. 144; Marine Welding and Repair Works, Inc.; Williamson Engine and Supply, Inc.; Greenville Manufacturing and Machine Works, Inc.; Greenville Propeller Works, Inc., 174 NLRB No. 102, footnote 5.

The Board Decision did modify the remedial notices somewhat and added two provisions to the Recommended Order. The second and more significant addition was a broad cease and desist order (JA 36). The Trial Examiner had recommended it (JA 26) but apparently through inadvertence failed to incorporate it in his Recommended Order.



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B. The Facts

When Board footnote 4 is compared with the facts of the vicious anti-union campaign engaged in by this Company, it becomes apparent that the National Labor Relations Act as presently administered is a "hollow promise".

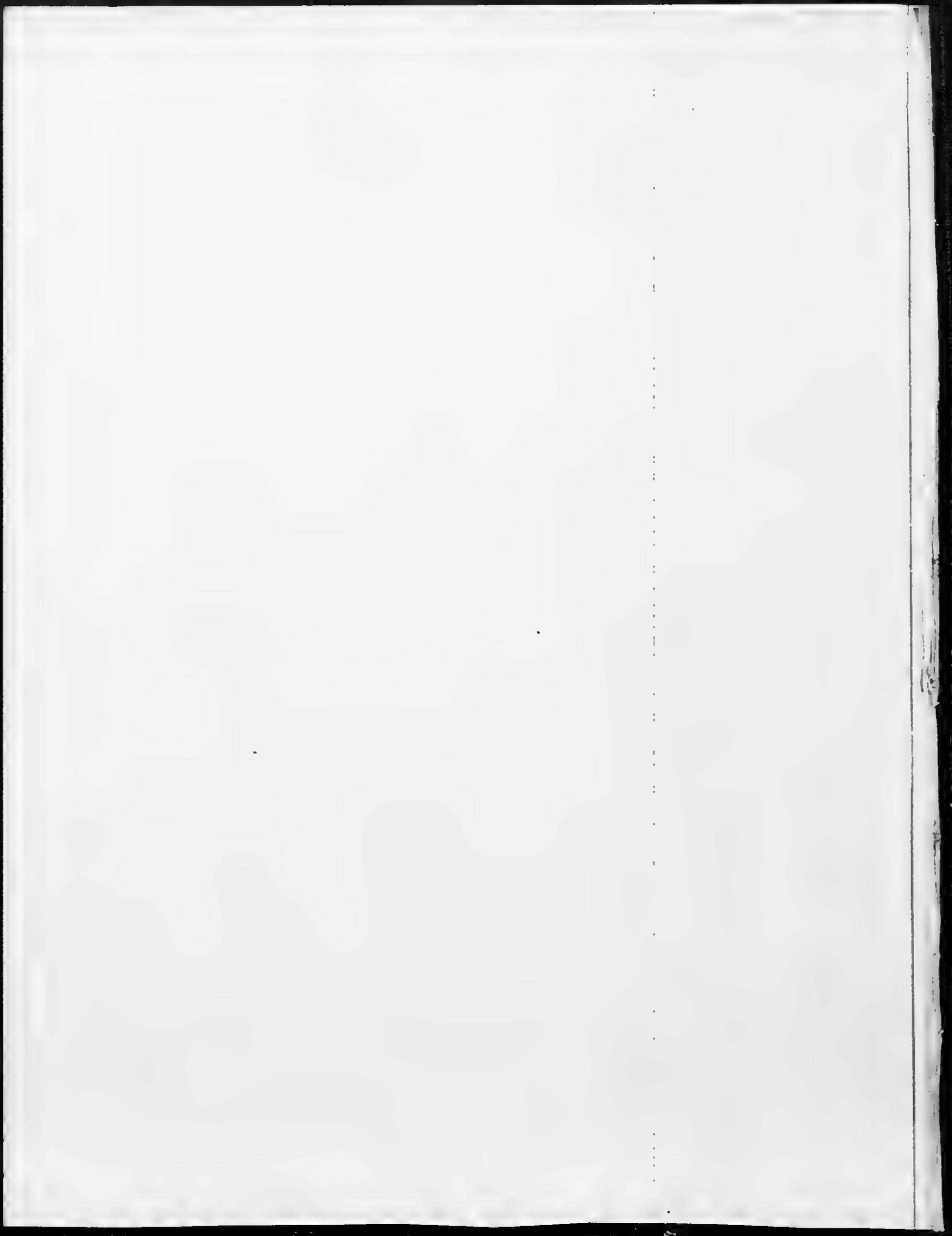
What follows is a relation of events as found by the Trial Examiner and affirmed by the National Labor Relations Board.

The Quality Rubber Manufacturing Company, Inc. operates, in addition to other plants, a rubber gasket plant in Wakefield, Michigan, where the events took place (JA 5). The plant normally runs on two 10-hour shifts with no scheduled breaks (JA 6). At the time of the events in question, the appropriate unit consisted of 31 to 32 employees (JA 19-20).

In April of 1967, Raymond Monte, a potential job applicant being shown around the plant was told by plant superintendent William Tersinar that one thing that would not be tolerated in the plant was a union.^{1/}

In October of 1967, Tersinar told employee Nels Luome that fellow employee Ralph Olsen had been laid off because he was a union organizer. The statement was overheard by two other employees. (8(a)(1) violation found (JA 7-8)).

^{1/} The statement is outside the Section 10(b) period, but is background of anti-union animus.





On December 29, 1967, Tersinar asked job applicant Donald Pikka whether he belonged to a union and then stated his determination not to have a union in the plant. (8(a)(1) violation found (JA 8)).

On February 12, 1968, the lack of a lunch break became a serious issue and certain employees in concert requested one of only ten minutes duration. They were turned down, but took it anyway, without comment from their supervisor until a few days later when they were threatened with discharge if they took another one. They ceased the lunch breaks.

On February 21, 1968, Tersinar fired three employees in retaliation for their concerted activities. (8(a)(1) and (3) violations found (JA 12)).

Tersinar became aware of the Steelworkers' involvement by the weekend of February 24-25 when he received a call from Mrs. Vilencia and later called Clarence Johnson -- both employees. In the first conversation he promised benefits if the union was not around. In the latter one he threatened that the plant would be closed if the union won the election -- an effective use of the carrot and the stick. Both were found to be 8(a)(1) and (3) violations (JA 14).

On the morning of February 26, 1968, as employees arrived, Tersinar launched into an anti-union tirade which included threats to shut the plant down if the union came in,

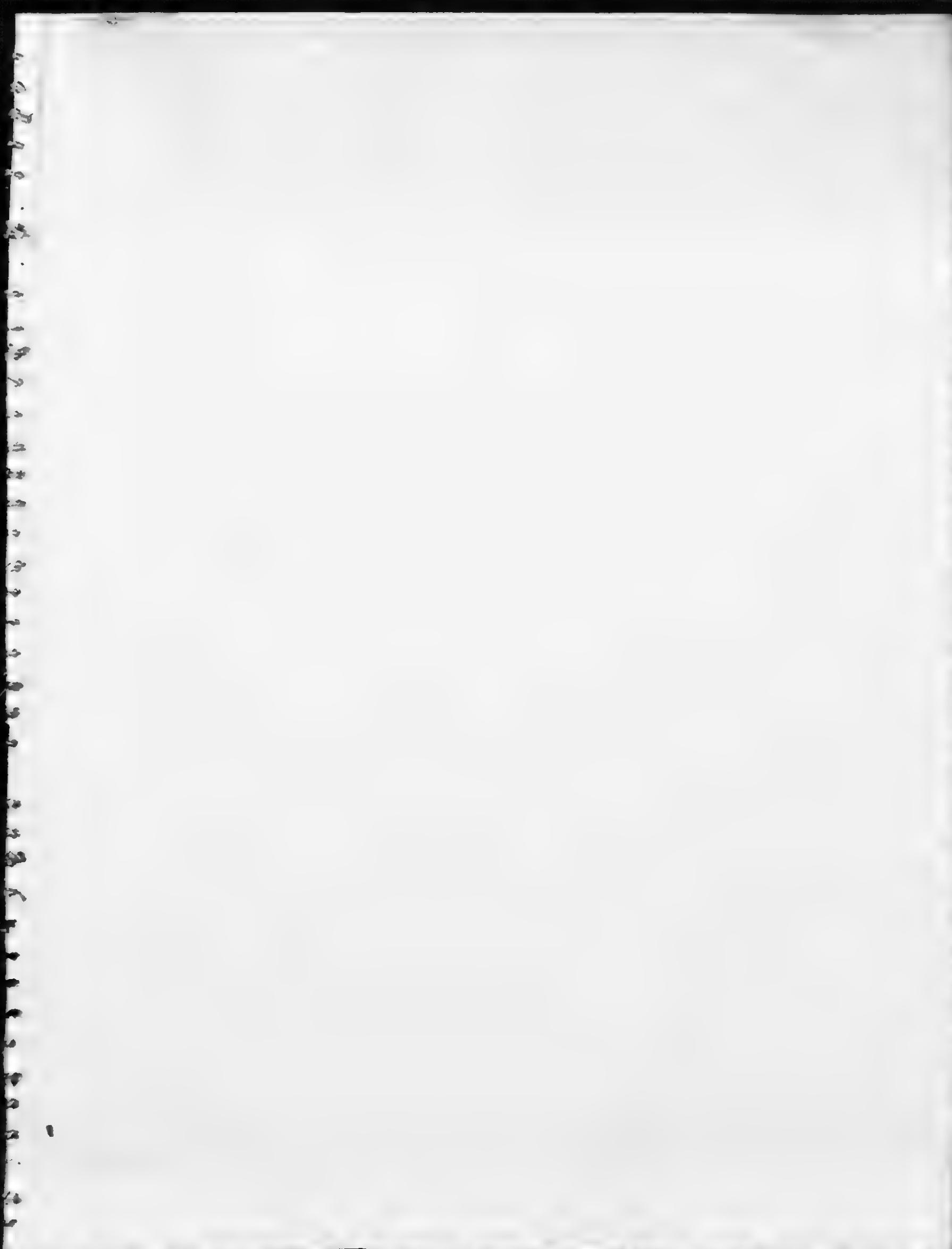
threats that men would have to work four machines without a break instead of three if the union came in and threats to fire employees to prevent unionization. (Numerous violations of 8(a)(1) found (JA 17-18)).

The culmination of this tirade was the discharge of 7 more employees for their union activities in violation of Section 8(a)(3).

Later that morning, the Union requested recognition as collective bargaining agent. The Company's ultimate position at a subsequent meeting with the Union was to deny recognition -- not because the cards were not valid, but because 10 of them were signed by persons no longer working for the Company -- the 10 found to be discharged in violation of Sections 8(a)(1) and (3) (JA 20). Counting the dischargees, the Union had a clear majority of 20 out of 31 employees.

Two other events that day should not be overlooked. Sometime before noon, Tersinar met Mrs. Valencia and told her that he might have to let her husband go if he was the union instigator (violation of 8(a)(1) found (JA 21)). In the late afternoon, Tersinar again threatened plant closing if the union came in and conducted an illegal interrogation of an employee (violations of 8(a)(1) found (JA 21)).

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On February 28, the Company illegally fired another employee, George Golembeski (JA 22) -- bringing the total number of employees discharged in violation of the National Labor Relations Act to 11.

This protracted litigation ther followed. Two years later, the employees remain discharged and the Company continues to refuse to bargain with the Union.

SUMMARY OF ARGUMENT

The violations of the National Labor Relations Act committed by this Employer are serious and flagrant. In addition to the extensive violations of Section 8(a)(1) and in addition to the clear refusal to bargain, this Company discharged 11 employees in a total work force of 31 because of their union activity.

The standard NLRB remedies are not sufficient to effectuate the policies of the Act in situations such as this where serious unfair labor practices have been committed. They do not dispel employee fear of retaliation; they do not make employees whole; and they do not deter future violations by the same employer or any other employer.

Backpay is too little and too late and is well worth the cost of defeating the Union. The reinstatement order is rarely effective because there are very few reinstatements which are accomplished successfully. The bargaining

order is nothing more than a meaningless piece of paper in many situations because employers are not required to make concessions. Thus, unless fear of retaliation has been dissipated and employees are once more unafraid to exercise their federal rights, the bargaining which results from such an order becomes a mismatch between unequal opponents.

The NLRB has recognized these problems and has taken steps in some cases to impose additional remedies. Since this case is far more serious than any of those in which such remedies have been imposed, the failure to provide for them in this case is a clear abuse of discretion. But, even were this not the case, the NLRB's failure to provide for adequate remedies to effectuate the policies of the Act in this case is an abuse of discretion.

The Court should correct these abuses by providing for the remedies requested by the Union in its initial Cross Exceptions to the Trial Examiner's Decision. While great weight is normally given to Board determinations in the remedial area, the clear default by the Board in this case is of such a nature that the Court should itself correct it without remand.

However, should the Court decide not to adopt that course of action, it is requested that the issue of the additional remedies requested by the Union be remanded to the Board for further consideration and that the balance of the case be enforced while those issues are pending on remand.

ARGUMENT

A. STANDARD NLRB REMEDIES ARE INADEQUATE WHERE, AS HERE, SERIOUS VIOLATIONS OF THE NATIONAL LABOR RELATIONS ACT HAVE OCCURRED.

This Employer's violations are egregious and shocking. They span the period from October 1967 to February 28, 1968 and include a plant manager's explanation that an employee had been laid off for his union activities, illegal interrogation of a job applicant coupled with a threat, illegal interrogations of employees, a promise of benefits, numerous threats that the plant would be closed if the Union came in, threats that employees would have to work harder in retaliation for unionization and threats to fire employees to prevent organization. Finally, in an almost unprecedented display of "man's inhumanity to man", eleven employees were fired because of their union activities. Few, if any, companies have gone to the extent of firing over one-third of their work force in order to smash a union organizing drive.

In the face of such an unprecedented display of illegal behavior, the NLRB issued its standard set of remedies. These remedies do not begin to cope with serious violations of the Act such as those present here.

An effective remedial policy is one which dispels employee fear of retaliation and deters future violations by the same employer.^{2/} It should also deter violations by other employers.^{3/}

Where serious violations are involved, the standard remedies accomplish none of the objectives. We discuss each remedy separately below.

1. Cease and Desist Order.

This order is not aimed at dispelling employee fear -- the employee may never know about the order itself -- but at deterring future violations.

Unfortunately, the cease and desist order is not self enforcing. It depends on Court of Appeals action.^{4/} This increases delay^{5/} with the result that by the time it is enforced there is frequently nothing to deter since, by that time, the organizational drive has been crushed. Moreover, the ultimate weapon behind the cease and desist order

2/ National Licorice Co. v. NLRB, 309 U.S. 350, 364 (1940); Lundy Manufacturing Corp., 136 NLRB 1230 (1962).

3/ Of course, remedies cannot be punitive.

4/ In fiscal year 1966, 63.6% of the Board's decisions went to the Courts of Appeals. See Office of the General Counsel, National Labor Relations Board, Summary of Operations, Fiscal Year 1966 and Fiscal Year 1967 (six months), released February 23, 1967, pp. 36-37.

5/ As indicated earlier, the events in this case will be more than two years old before this case is argued orally.

is contempt. Yet, in all of Fiscal Year 1966, only 18 petitions for contempt were sought by the Board in the Courts of Appeals^{6/} -- hardly a deterring thought. And even the remedy for civil contempt is by no means an economic bone crusher (when it finally comes) to a company which has avoided unionization for an extensive period of time.^{7/}

In short, then, a cease and desist order tells an employer to cease certain illegal activity when the full benefit of that illegality has been reaped, and tells him rather ineffectively at that.

2. Remedial Notice.

The Notice which is posted on the Employer's bulletin board is totally ineffective in dispelling fear of retaliation.

The fact that it is posted does not mean that it is read. Even if an employee reads it, he does so in a hurried and hostile environment. The person known to the employees as primarily responsible for the unfair labor practices may not be the person who actually signs the notice. Since the Employer cannot be required to "confess"

6/ Summary of Operations, supra, note 4, pp. 37-38.

7/ The "broad" cease and desist order suffers from the same drawbacks. In addition, its broad language raises other problems. Dennis M. Flannery, "The Need For Creative Orders Under Section 10(c) of the National Labor Relations Act," 112 University of Pennsylvania Law Review 69, 79 (1963).

that he has committed the acts of which he has been found guilty, he may attempt some collateral communication with the employees which subtly undermines the notice.

But most important, the method of communication chosen by the Board -- the posting of a notice on a bulletin board -- is quite meek in comparison with the methods of communication available and used by the Employer to undermine the Union in the first instance. In this case, the Employer did not attempt to defeat the Union by posting notices on bulletin boards. He confronted them orally, either individually or in groups. Yet, the NLRB seems to feel that such vigorous person-to-person threats can be allayed by sterile, legalistic notices.^{8/}

8/ These and other drawbacks to the Board's remedial notice are attested to by numerous authorities. J. P. Stevens & Co. v. N.L.R.B., 380 F. 2d 292, 304 (2 Cir., 1967); Bok, "The Regulation of Campaign Tactics In Representation Elections Under the National Labor Relations Act," 78 Harvard Law Review 38, 135-136; Aspin, "A Study of Reinstatement Under the National Labor Relations Act," Doctoral Dissertation, M.I.T., 1966. A Summary of the Aspin study prepared by the author is published in the Hearings Before The Special Subcommittee on Labor of the Committee on Education and Labor, House of Representatives (90th Congress, First Session), 1967, p. 3, 9; "National Labor Relations Act Remedies: The Unfulfilled Promise," Report of the Special Subcommittee on Labor of the Committee on Education and Labor (90th Congress, Second Session), 1968, p. 36.

3. Backpay.

The possibility of having to give backpay to employees discriminatorily discharged for their union activities is not a significant deterrent to the employer bent on destroying the union. The 8(a)(3) violation serves the dual purpose of erasing a union adherent and at the same time delivering an object lesson to others who might be similarly inclined. These two results lead, as in this case, to a defeat of unionism in the plant. That outcome is far more valuable than the small amount of money involved in backpay^{9/} which is, incidentally, tax deductible as a "business expense". The Chairman of the Board has lamented publicly the inadequacy of backpay as a cure for serious violations.^{10/}

Moreover, the backpay remedy does not even make the dischargee whole for losses suffered. In this case, the backpay is already two years overdue. It will not pay for

^{9/} Particularly since the employee is under an obligation to seek other employment and wages earned in such other employment are deductible in calculating backpay owed.

^{10/} Chairman Frank McCulloch, Address to the Federal Bar Association's 41st Annual Convention (1961), 31 Law Week 213. The neutral authorities concur: Bok, supra, note 8, at pp. 59 (footnote 46), 124, 127, 130, 137; Flannery, supra, note 8 at p. 82; Staff of Subcommittee on NLRB, House Committee on Education and Labor (87th Congress, Second Session), Administration of the Labor Management Relations Act by the NLRB (87th Congress, Second Session), 1961.

the humility of unemployment, the loss of living quarters due to eviction or foreclosure or the serious inconvenience and family hardship caused when an employee in a small town such as this must move himself and/or his family to another community in order to secure employment.^{11/}

4. Reinstatement.

The actual reinstatement of all dischargees can be of significant value in resurrecting a union organization in a plant.

In light of this fact, it is tragic that there are few actual reinstatements which are successful. The recent Aspin study, supra, note 8, which is clearly the most authoritative one on this subject, studied the cases of 194 employees illegally discharged for union activity.

Aspin found that only 85 were actually reinstated. The most frequent reason why employees did not return was fear of company retaliation. The second reason in order of frequency was "a better job". Obviously, the longer the delay until reinstatement is agreed to or ordered, the greater the chances that another job will have been obtained.

^{11/} These and other drawbacks in the backpay area are cited by Aspin, supra, note 8, pp. 9-10. See also Report of the Special Subcommittee on Labor of the Committee on Education and Labor, supra, note 8, p. 36.

The vast majority of the 85 who did return left after returning -- most because of company treatment -- and Aspin concluded that reinstatement really was successful in only 27 out of an original 194 cases.

Thus, in practice, reinstatement provides no real hope for restoring the momentum of the union's pre-violation organizing drive.

5. The Bargaining Order.

While a bargaining order may be of some value where the violations are not too serious, there should be no lingering doubt of the ineffectiveness of this remedy where serious violations are involved. Professor Phillip Ross conducted the most extensive study and analysis of bargaining orders which has been undertaken and that conclusion permeates the entire study.^{12/}

The bargaining order brings an employer to the bargaining table, but it does not require him to make concessions. Thus, an employer such as this may and will engage

^{12/} Ross, Analysis of Administrative Process Under Taft-Hartley, 63 Lab. Rel. Rep. 132 (BNA 1966). Perhaps, because of this fact, there has been a startling rise in the proportion of 8(a)(5) charges filed. In 1958, 17% of all charges against employers were for refusals to bargain. In 1962, that figure had risen to 25%. Twenty Seventh Annual Report of the National Labor Relations Board for the Fiscal Year Ended June 30, 1962, (U.S. Gov't. Printing Office, Washington, D. C., 1963), p. 7. In fiscal year 1966, the figure was 35%. Summary of Operations, *supra*, note 4, p. 15.

in futile bargaining unless the union has strength in the form of employee support. But, employees who have seen lengthy litigation end in a hollow victory which does little more than slap an employer's hands lightly, are not apt to put their heads on the chopping block again.^{13/}

We do not ask that the NLRB make employees support the Union. But it is essential that the Board remove the illegally created fear of retaliation. That is not accomplished by the foregoing remedies.

The Board itself has recognized the ineffectiveness of its standard remedies in situations where serious unfair labor practices are involved.

On February 15, 1968, Chairman Frank W. McCulloch stated:

The unwillingness of some employers to respect their statutory obligation -- even when that obligation is clear and unambiguous -- is a major part of our concern in reevaluating the adequacy of bargaining remedies,...^{14/}

13/ Even if the bargaining order were effective, it would not compensate the employees for the Union-negotiated benefits they would have had if the Company had bargained in the first place.

14/ "Past, Present and Future Remedies under Section 8(a) (5) of the National Labor Relations Act," address at the Federal Bar Association and the George Washington University National Law Center Labor Relations Institute on February 15, 1968 in Washington, D. C. 1968 Labor Relations Yearbook (BNA, 1969), p. 114, 116.

Moreover, the NLRB has given decisional recognition to the ineffectiveness of its standard remedies in a number of recent cases including H. W. Elson Bottling Company, 155 NLRB 714 (1965), enf. with modification sub nom., NLRB v. Elson Bottling, 379 F. 2d 223 (6 Cir., 1967) and J. P. Stevens & Company, 157 NLRB 869 (1966), enf. with modification sub nom., J. P. Stevens & Company v. N.L.R.B., 380 F. 2d 292 (2 Cir., 1967). Finally, on May 26, 1967, the Board issued an order providing for oral argument in four cases on the "possibility and propriety of its adopting additional or new methods to remedy unlawful refusals to bargain in violation of Section 8(a)(5)...." Zinke's Food, Inc., Case No. 30-CA-372, and companion cases, discussed infra at page 24. Oral argument was had in July of 1967, but the cases are still pending without decision by the Board.

This Court, while less frequently exposed to the problem than the Board, has seen the problem even more clearly:

This court is cognizant of the fact that the Board's remedial measures have not proved adequate in coping with the recalcitrant employer determined to defeat the effective unionization of his plant by illegally opposing organizational and bargaining efforts every step of the way.^{15/}

^{15/} Steelworkers v. N.L.R.B. (H. K. Porter Co.), 389 F. 2d 295, 301 (D.C. Cir., 1967).

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In summary then, the standard remedies used by the National Labor Relations Board do not fulfill normal remedial objectives when they are used without additional remedial support in cases of serious and flagrant violations of the National Labor Relations Act.

B. THE NLRB'S FAILURE TO PROVIDE ADDITIONAL REMEDIES IN THIS CASE WAS AN ABUSE OF ITS DISCRETION.

The Courts have long held that the matter of remedies is one peculiarly suited for administrative competence in which the Board draws on its enlightenment gained from experience. Fibreboard Paper Products Corp., v. N.L.R.B., 379 U.S. 203, 216 (1964); Phelps Dodge Corp. v. NLRB., 313 U.S. 177, 194 (1941). But, Board power in this area is not absolute and this Court has itself remanded cases to the Board for further consideration of remedies. Steelworkers v. N.L.R.B. (H. K. Porter Co.), supra, note 15.

The Board's failure to provide additional remedies in this case is clearly an abuse of its discretion.

An analysis of the cases where additional remedies have been ordered by the Board indicates that the violations were very serious, but not as serious as those in the instant case.

In H. W. Elson Bottling Company, 155 NLRB 714 (1965), the Board found that "under the circumstances of this case, the serious violations of the Act committed during the

organizational campaign call for something more than the usual posting of notices." (At. p. 715). It therefore ordered, in addition to its standard remedies, that the company:

1. Mail the remedial notice to the employees. (Similar to union cross exception 2 in the instant case).
2. Provide the Union access to Company bulletin boards for three months. (Similar to union cross exception 3 in the instant case).
3. Provide the Union facilities for a one-hour speech at each of the two plants on company time. (Similar to union cross exception 3 in the instant case).^{16/}

As indicated above, the unfair labor practices in Elson Bottling were serious. They included coercive speeches to the employees threatening layoffs and curtailment of operations and promises of wage increases. They also involved successful attempts to get the employees to sign statements withdrawing the union authorization cards. Finally, they included institution of wage and commission increases. However, no one was discharged.

The activities of Quality Rubber are similar in many respects and more serious in others. A captive audience speech was used (only one was necessary). There were no

^{16/} The Sixth Circuit enforced provisions 1 and 2 and modified 3 for reasons which will be discussed below. 379 F. 2d 223 (6 Cir., 1967).

threats to curtail operations; rather, the threat was to shut them down completely. There was a promise of benefits. There was no threat to layoff employees as such, rather there was a warning that at least one employee had already been laid off. Finally, this employer did not adopt the "humanitarian" tactic of seeking employee renunciations of their authorization cards. Instead, it simply fired them. Clearly then, both cases involved serious violations. Those committed by Quality Rubber were more serious because of the discriminatory discharges involved.

Of course, the most notorious, recent violator of the National Labor Relations Act is J. P. Stevens & Company. Its illegal activities in various parts of the South are resulting in one Board case after another. We shall limit ourselves to the first Stevens case decided by the Board since it was perhaps the most serious.^{17/}

In that case, there were extensive unfair labor practices including threats of reprisal and promises of benefit, illegal interrogations, and illegal surveillance. In addition, 71

17/ J. P. Stevens Co., 157 NLRB 869 (1966), enf. with modification, 380 F. 2d 292 (2nd Cir., 1967), cert. denied, 389 U.S. 1005. The other cases are: J. P. Stevens Co., 163 NLRB 217 (1967), enf. with modification, 388 F. 2d 896 (2nd Cir., 1967), cert denied 393 U.S. 836; J. P. Stevens & Co., 167 NLRB Nos. 37, 38 (1967), enf. in relevant part, 406 F. 2d 1017 (4th Cir., 1968); J. P. Stevens Co., Inc., 171 NLRB No. 163 (1968), enf. F. 2d , 72 LRRM 2433 (5th Cir., 1969).

employees were fired for union activities, 2 discriminated against in the assignment of overtime and 2 fired in violation of Section 8(a)(4).

Quantitatively, the violations in Stevens were greater than in the instant case, but the Stevens operations involved are enormous -- in contrast to Quality Rubber's small plant. For example, the first case involved 4 plants located in the Rock Hill, South Carolina vicinity, 10 plants in the Greenville, South Carolina vicinity, a plant at Whitmire, South Carolina and 5 plants in the Roanoke Rapids, North Carolina vicinity. Thus, when size is taken into account, it may be said with reasonable assurance that the violations in the instant case are at least as serious and flagrant as those in Stevens, supra, note 17.

The Board in Stevens, supra, note 17, agreed that the standard remedies were not adequate to undo the effect of the unfair labor practices. (At. p. 878). It, therefore, ordered the following relevant, additional remedies:

1. Mail the remedial notice to the employees.
(Similar to union cross exception 2 in the instant case).

2. Provide the union access to company bulletin boards for one year. (Similar to union cross exception 3 in the instant case.^{18/}
3. Convene during working time meetings of employees with the employer to read the remedial notice at those assemblies.^{19/}

We have already indicated, supra, p.19, that the NLRB currently has under consideration the institution of compensatory relief for refusals to bargain. The vehicles for this consideration are four cases: Zinke's Foods, Inc. (TXD 662-66, 30-CA-372); Ex-Cell-O Corporation (TXD 80-67, 25-CA-2377); Herman Wilson Lumber Company (TXD 757-66, 26-CA-2536); and Rasco Olympia, Inc., d/b/a Rasco 5-10-25¢ (TXD (SF) 167-66, 19-CA-3187).

18/ Additional remedy 2 was rejected by the Second Circuit on the ground that no organizational need for access was shown. 380 F. 2d 292, 305. In the second Stevens case, the Second Circuit granted remedy 2 because it was shown that the company had coercively used its bulletin boards. 388 F. 2d 896, 905.

19/ The Second Circuit modified this remedy to provide that the company could, at its option, have the notice read by a Board Agent instead. 380 F. 2d 292, 304-5. As modified, it is similar to the remedy requested by the union in its cross exception 4 to the Trial Examiner's Decision.

Once again, the unfair labor practices involved in this case are far more serious than those in the four cases above.^{20/}

In summary, the Board has, in prior cases, granted the same or similar remedies as those requested by the Union in its cross exceptions 2 - 4 to the Trial Examiner's Decision. In all of those cases, the unfair labor practices were serious, but in none of them were they more serious than in the instant case. By thus acting contrary to the very precedent which it has established and purports to follow, it has abused its discretion.

With respect to union cross exception 1, the Board had the four cases above under consideration when this case came up. Since the violations are far more serious here, it should have, at the very least, rendered the decision it did^{21/} but have retained the case solely for further consideration of the remedy requested in cross exception 1.

^{20/} Zinke involved fairly extensive 8(a)(1) conduct, one 8(a)(3) and a refusal to bargain. Ex-Cell-O involved a refusal to bargain after a Board election. Herman Wilson involved a refusal to bargain after a Board election and the granting of a wage increase. Rasco involved a refusal to bargain and 8(a)(1) conduct.

^{21/} With the addition of the remedies requested in cross exceptions 2 - 4.

(Lest the Board argue that it is not an abuse of discretion for it to continue with its present remedial policy while it is considering future remedial changes, we hasten to point out that, in the Preston case,^{22/} the NLRB successfully requested this Court to enforce in all respects, but remand the issue of compensatory relief to be considered in conjunction with the four above-mentioned cases. Once again, the unfair labor practices in Preston were not as serious as those involved in the instant case.

The instant Board decision does not even attempt to explain its contrary action here -- much less furnish a remedial rationale. In footnote 4 of the Decision, the Board states:

We deem it inappropriate in this case to depart from our existing policy with respect to remedial orders in cases involving violations of Section 8(a)(5) or violations of Section 8(a)(3) and (1) where, as here, the record affords insufficient basis for additional remedial action. See, Monroe Auto Equipment Company, Hartwell Division, 164 NLRB No. 144; Marine Welding and Repair Works, Inc.; Williamson Engine and Supply, Inc.; Greenville Manufacturing and Machine Works, Inc.; Greenville Propeller Works, Inc., 174 NLRB No. 102, footnote 5. (Emphasis supplied).

Perhaps, if the Plant Superintendent had been kind enough to fire 50% instead of 33% of the employees, that

^{22/} Preston Products Company, Inc., 158 NLRB 322 (1966), modified in relevant part sub nom. UAW v. NLRB (Preston Products Co.), 392 F. 2d 801 (D.C. Cir., 1967).

would have been sufficient "basis for additional remedial action." Maybe instead of threatening plant closure three or four times, it is necessary to make such threats five times. But, of course, this cannot be what the Board had in mind, for as we have shown the violations here were worse than those in the cases in which the Board has granted exceptional remedies.

There can be no doubt that the violations of Quality Rubber are serious and flagrant. They go to the very heart of the Act, and they go far beyond the violations committed by employers in cases where additional remedies were granted. There should be no doubt that the Board remedies provided in this case do not restore the status quo ante, do not make employees whole, do not restore union strength, and do not deter future violations of the Act.

Nevertheless, we grant the NLRB the lingering presumption that there must have been some reasoning -- however misdirected -- which led them to their decision in this case. In an attempt to uncover that reasoning, we turn to the decisions cited by the Board in its footnote 4.

Monroe Auto Equipment Company, Hartwell Division, 164 NLRB No. 144 (1967), is apparently cited in support of the Board's rejection of union cross exception 1. There, the Board, in footnote 1, simply said that it was "inappropriate in this case to depart from our existing policy with respect to remedial orders in Section 8(a)(5) cases. The Board

further indicated that it did not pass upon the Trial Examiner's reasoning on the issue. In other words, we are not going to give you any additional remedies and we are not going to tell you why.

The other case cited indicates the wisdom for this silence on "rationale". For when the Board feebly attempts rationale, it ends up in inconsistency. In Marine Welding and Repair Works, etc., 174 NLRB No. 102 (1969), the Board granted a remedy requiring either a management representative or a Board agent to read the remedial notice.^{23/} However, the Board rejected the Trial Examiner's recommendation that the Union have three month bulletin board privileges in the plant on the grounds that there was no necessity for it in the organizing campaign and that the employer had not used his bulletin boards coercively. The Board also rejected a request for a one-hour union meeting on company time. No reason was given.

The Board's reasoning in Marine Welding, to the extent that there is any, is inconsistent with H. W. Elson Bottling, 155 NLRB 714 (1965) where it granted these very same remedies even though there were only 23 employees in the unit and there

^{23/} Similar to union cross exception 4. Serious unfair labor practices were committed. However, they were not as serious as the instant case. For example, 3 of 115 employees discharged in comparison with 11 of 31.

was no coercive use of the bulletin boards. Moreover, as we discuss below, the critical advantage of bulletin board access and the "captive audience speech" are not the communication with the employees themselves, but the psychological boost it gives in unionizing or reunionizing, for the employees see that the Union has now breached the previously unbreachable enemy territory of fear.

The standard remedies provided under the National Labor Relations Act are inadequate to remedy serious employer unfair labor practices. The Board, by failing to provide for additional remedies here, has defaulted in its duty. Another indication of Board abuse of discretion is the fact that it has granted or is entertaining in other cases remedies similar to all of those requested by the Union in this one. In those other cases, the unfair labor practices were not as serious.

C. THE REMEDIES SOUGHT BY THE UNION IN THIS CASE ARE APPROPRIATE TO EFFECTUATE THE POLICIES OF THE ACT.

We have already shown that the standard remedies are insufficient to cure the serious unfair labor practices committed by this Employer and that the Board's failure to provide for additional remedies was an abuse of discretion.

We turn now to the specific remedies which the Union requested and show that they are appropriate under the Act and under the facts of this case.

1. This Court should order that the employer compensate the employees for the benefits they would have received had the company not unlawfully refused to bargain.

This so-called compensatory remedy is now before the NLRB. The sad fact of the matter is that it was argued orally before the Board on July 12 and 13, 1967. Now some two and one-half years later it is still "under consideration."

While the effects of such a remedy are far reaching in that it would take some of the profit out of illegal resistance to the Act and reduce the advantage to be gained from litigation delay, the concept of compensatory relief is relatively simple.

An employer who resorts to illegal means to destroy a union majority should not be allowed to profit from that activity. Rather he should be required to make his employees whole for the amount of additional wages and other benefits they would have received had the union majority not been dissipated by the company. This is precisely the remedy which the Supreme Court approved in Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203, 215-217 (1964).

Those who argue that such a remedy violates Section 8(d) because it, in effect, writes a collective bargaining agreement for the parties are raising a straw man. The compensatory remedy is retrospective not prospective. It, like backpay in the 8(a)(3) context, simply seeks to reimburse the employee for the amount he is out of pocket because of the employer's unfair labor practices. Just as backpay does not set future wage rates of the discriminatee so too compensatory relief does not provide the union and company with a contract.

Nor is compensatory relief speculative. It is true that the amount may be difficult to determine in some cases, but various standards are available to provide starting points for reasonable approximations.^{24/} The matter of approximating amounts of money is not new to the Board. In Jack G. Buncher, 164 NLRB No. 31 (1967), affirmed 405 F. 2d 787 (3rd Cir., 1969), cert. denied 38 U.S.L. Week 3128 (1969), the Board found it necessary to approximate the date that discharged employees would have been laid off so that backpay could be calculated.

^{24/} Bureau of Labor Statistics Wage Index on yearly percentage increases in union wages; average rate for similar jobs in the community; average rate for other unionized plants of the company.

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^{24/} Bureau of Labor Statistics Wage Index on yearly percentage increases in union wages; average rate for similar jobs in the community; average rate for other unionized plants of the company.

The Union believes that compensatory relief is the answer to remedy problems raised by many of the unfair labor practice cases that presently come before the Board. It is certainly appropriate in cases such as this where serious unfair labor practices have been committed.

We request that this Court approve and order the compensatory relief sought herein. We are not unmindful that this Court understandably is reluctant to order remedies different from those ordered by the Board because of the view that "remedies should be worked out by those having the most experience and expertise in the area." Electrical Workers (IUE) v. N.L.R.B., 383 F. 2d 230, 233, footnote 5 (D.C. Cir., 1967).

However, other Circuits have themselves modified remedies without remand to the Board. J. P. Stevens and Co. v. N.L.R.B., 380 F. 2d 292 (2nd Cir., 1967); N.L.R.B. v. Elson Bottling, 379 F. 2d 223 (6th Cir., 1967); NLRB v. Warrensburg Board & Paper Corp., 340 F. 2d 920 (2nd Cir., 1965). This case is appropriately suited for similar treatment. The N.L.R.B. has had the compensatory relief issue for two and one-half years now. While the cases pose a novel issue, they are clearly not so difficult as to require that amount of time to resolve. The conclusion is inescapable: the N.L.R.B. is either unwilling or unable to come to grips with the serious problem of effective remedies in this area. Because of this default of duty a higher court should intervene.

Assuming arguendo that this Court decides not to rule on the compensatory relief issue until the Board does, then the Union requests that this case be enforced in all respects requested by the Board (with whatever remedial modifications this Court deems appropriate), but with a remand to the Board on the compensatory relief issue. The unfair labor practices in this case are more serious than in Preston, supra, note 22, and this Court remanded Preston for further consideration of the request for compensatory relief.

2. This Court should order that the employer mail the remedial notice to all employees now working at the employer's plant or working at the plant at the time the campaign was in progress.

As we have demonstrated, the mailing remedy has been utilized on a number of occasions. Its utilization has been approved by the Courts which have had an opportunity to rule upon it.^{25/}

In discussing the remedy, the Second Circuit has stated:

An employee who must scan the Board's notice hurriedly while at work, under the scrutiny of others, will not be as able to absorb its

^{25/} N.L.R.B. v. Elson Bottling, 379 F. 2d 223 (6th Cir., 1967); J. P. Stevens & Co. v. N.L.R.B., 380 F. 2d 292 (2d Cir., 1967), cert. denied 389 U.S. 1005; Electrical Workers (IUE) v. N.L.R.B., 383 F. 2d 230 (D.C. Cir., 1967)

meaning and hence to understand his legal rights as one who reads it at home in a more leisurely fashion.²⁶

The same considerations apply equally here. In fact, it would not be unreasonable for an employee to fear that this Employer would fire him if he paused to read the notice.

The notice should also be mailed to former employees of the Company employed there when the unfair labor practices took place, including the discriminatees. It is only in this way that the Board can assure that such employees will be aware that the Employer committed unfair labor practices for which a remedy has been imposed, and that the discriminatees will not forego reinstatement out of fear.

Because of the Board's clear abuse of discretion in failing to provide this remedy in this case, the Court should order it rather than remanding. However, if the Court decides to remand, it is requested that the balance of the Board order be enforced so that at least some delay can be avoided. What is said here applies with equal force to the other remedies requested below.

3. This Court should order the Company to grant the Union an opportunity to reply to the Company's coercive threats and interrogations on Company property.

We have already demonstrated that the Board has on a number of occasions provided, as a remedy, Union access to the plant -- either through the use of bulletin boards or "company time" meetings at which the union speaks.

^{26/} J. P. Stevens & Co. v. N.L.R.B., 380 F. 2d 292, 304 (2d Cir., 1967).

The bulletin board access, although initially objected to by the Second Circuit on the ground that there was no showing of organizational need, has subsequently been enforced by that Circuit on the theory that the bulletin boards were used for coercion and for combatting the union.^{27/} The Sixth Circuit has approved bulletin board access although modifying a "company time" meeting remedy in the same decision partially on grounds of union access.^{28/} This Court has approved the company time meeting remedy without reference to organizational need. In so doing it distinguished Elson Bottling, supra, note 28, on the ground that aggravated circumstances were present.^{29/}

It is submitted that bulletin board access and "company time" meetings or both are appropriate in this case. This case, like Electrical Workers, supra, note 29, involves aggravated circumstances in the form of extreme unfair labor practices which make the "organizational need"

27/ Textile Workers Union v. N.L.R.B., 388 F. 2d 896, 905 (2d Cir., 1967).

28/ N.L.R.B. v. Elson Bottling Co., 379 F. 2d 223, 226-227, (6th Cir., 1967).

29/ Electrical Workers (IUE) v. N.L.R.B., 383 F. 2d 230, 232, footnote 4 (D.C. Cir., 1967).

for such remedies critical if fear is to be dissipated and union strength restored. While it would seem at first blush that access to employees is not difficult for the union organizer in small plants such as this, nevertheless such access is meaningless when there is also present the "ministry of fear" atmosphere engendered by such serious violations of federal labor policy. Union access to the plant is important in this regard since it demonstrates to employees that the employer is no longer the unrestrained tyrant in his own plant that he once was. Moreover, since the Employer used a meeting with the employees within the plant as one of his most effective means of intimidating the employees, it is fitting that the Union be granted a similar opportunity for a meeting to dissipate that fear. Bulletin board access is fitting as a follow-up to that meeting to indicate continuing Union presence as a check to any further Company retaliation.

The Union therefore requests that this Court order the Employer to grant the Union, upon request, time for a one hour speech to employees on Company time and access to the Company's bulletin boards for a period of one year.

4. This Court should order the Employer to grant the National Labor Relations Board, through one of its agents, an opportunity to enter upon Company property and indicate to the employees their rights under the National Labor Relations Act and answer questions from said employees.

The Second Circuit has upheld the appropriateness of the remedy of Board access to the plant.^{30/} Essentially, it held that while there is an element of humiliation involved in requiring the employer to read the notice, that factor can be overcome by giving the employer the option of having a Board Agent read it instead. A panel of this Circuit (Judge Wright, dissenting) has taken issue with the Second Circuit on the ground that such a remedy puts the N.L.R.B. in the position of appearing to sanction a particular union.^{31/}

We strongly urge that this Court reconsider that rationale. The N.L.R.B. would be appearing merely to read the Notice and (if ordered) answer questions on it. As such, it would not be appearing to sanction the Union but merely to sanction the National Labor Relations Act. Moreover, if there were any danger, it could be alleviated by having the Board Agent specifically disclaim such a purpose in his appearance before the employees.

In addition, the facts of this case do not warrant undue consideration for the tender feelings of the Employer.

30/ J. P. Stevens & Co. v. N.L.R.B., 380 F. 2d 292, 304-5 (2d Cir., 1967). But contra, N.L.R.B. v. Laney and Duke Storage Co., 369 F. 2d 859 (5th Cir., 1966).

31/ Electrical Workers (IUE) v. N.L.R.B., 383 F. 2d 230, at footnote 5, (D.C. Cir., 1967).

He has indicated by his conduct that he has little regard for the feelings of his employees or their rights under the National Labor Relations Act.

Such a remedy would effectuate the policies of the Act for it would help to indicate to the employees that they have federally protected rights and that those rights must be respected.

Therefore, the Union requests that this Court order the Employer to read the notice to the employees in an assembly unless he prefers that the Board Agent perform that function.

CONCLUSION

For the reasons stated the Union requests that this Court order the additional remedies which it sought before the National Labor Relations Board, or that in the alternative the decision of the National Labor Relations Board be enforced, with the matters raised by this petition remanded to the Board for further consideration.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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U.S. COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT
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UNITED STEELWORKERS OF AMERICA, AFL-CIO, Petitioner

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

and

QUALITY RUBBER MANUFACTURING COMPANY, Inc., Intervenor

NATIONAL LABOR RELATIONS BOARD, Petitioner

v.

QUALITY RUBBER MANUFACTURING COMPANY, Inc., Respondent

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO, Intervenor

On Petition for Review and Application for Enforcement of an Order
of the National Labor Relations Board

SEAL FOR THE NATIONAL LABOR RELATIONS BOARD

APPROVED AND SIGNED

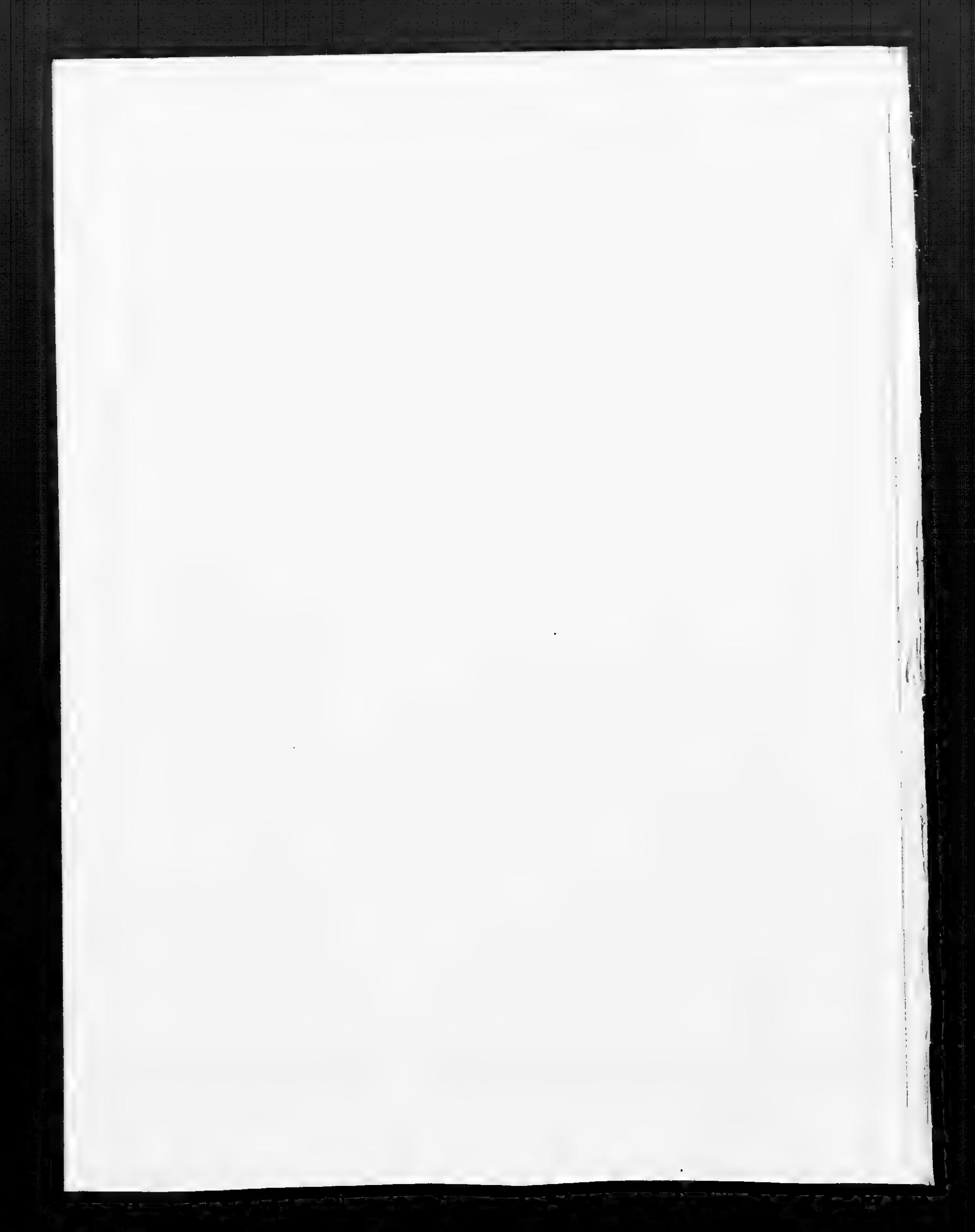
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ASSISTANT CLERK

U. S. COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA

CIRCUIT CLERK'S OFFICE



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v.

QUALITY RUBBER MANUFACTURING COMPANY, INC., Respondent

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO, Intervenor

*On Petition for Review and Application for Enforcement of an Order
of the National Labor Relations Board*

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

ISSUES PRESENTED FOR REVIEW

1. Whether substantial evidence on the whole record supports the Board's finding that the Company interfered with, restrained and coerced its employees in violation of Section 8(a)(1) of the Act by threats, interrogation, and promises of benefits.

2. Whether substantial evidence on the whole record supports the Board's findings that the Company discharged three employees in violation of Section 8(a)(1) of the Act and eight other employees in violation of Section 8(a)(3) and (1) of the Act.
3. Whether substantial evidence on the whole record supports the Board's findings that the Union represented a majority of the Company's employees and the Company refused to bargain with it in violation of Section 8(a)(5) and (1) of the Act.
4. Whether the Board's order is proper.

In accordance with Rule 8(d) of the General Rules of this Court, the Board states that this case is before the Court for the first time on the merits.

REFERENCE TO RULINGS

No. 23,551 is before the Court upon petition of the Union (United Steelworkers of America, AFL-CIO) to review an order and supplemental order of the National Labor Relations Board issued against the Company (Quality Rubber Mfg. Co., Inc.) pursuant to the National Labor Relations Act, as amended (61 Stat. 163, 73 Stat. 519, 29 U.S.C. Sec. 151 *et seq.*). No. 23,709 is before the Court upon application of the Board for enforcement of the same order and supplemental order. The Board's Decision and Order issued on May 21, 1969 and is reported at 176 N.L.R.B. No. 7; the Supplemental Decision and Order issued on September 30, 1969 and is reported at 178 N.L.R.B. No. 117 (A. 34-40).¹ This Court has jurisdiction under Section 10(e) and (f) of the Act.

¹"A." references are to the printed appendix. References proceeding a semicolon are to the Board's findings; those following are to the supporting evidence.

COUNTERSTATEMENT OF THE CASE

I. THE BOARD'S FINDINGS OF FACT

*A. The Company's Wakefield plant;
its hostility to unionization there*

The Company operates a plant at Wakefield, Michigan which manufactures rubber gaskets primarily for automobiles (A. 4; 49). At the time of the events herein, the plant superintendent was William Tersinar. His son, John, was in charge of the second shift at the plant (A. 8; 198-199). Most of the male employees at the plant were pressmen who inserted rubber pellets into molds, which were then heated in an oven for about eight minutes each. The molds were emptied and the formed gaskets tumbled in tumbling machines at 60° below zero to smooth their surfaces. Women employees inspected and packed the finished product. Each pressman was responsible for three molds which had to be kept continuously filled. There was no scheduled break time for the pressmen for lunch or a rest; they simply used whatever time was available between closing one set of molds and opening and refilling another (A. 5; 49-50, 64, 84-85, 164, 176-177, 185, 217).

On or about the beginning of April 1967, employee Raymond Monti applied for a position with the Company. During an interview William Tersinar informed him that "there's one thing we will not do in this plant, we will not have a union. We don't want anything to do with a union and we will not tolerate it" (A. 7; 116-117). Tersinar went on to comment

that the Company's Chicago employees were unionized, but that "it did not pay" for them to be represented (A. 7; Tr. 117).²

About the beginning of October, 1967, employee Nels Luoma questioned William Tersinar concerning the dismissal of another employee, Ralph Olson. Tersinar replied that Olson was terminated "because he's a union organizer" (A. 7; 111). Tersinar's explanation was overheard by two other employees, Verner Mattson and Glen LeGassa (A. 7; 57-58; 105).³

On or about December 29, 1967, employee Donald Pikka applied for employment with the Company. Tersinar asked whether Pikka "belonged to any unions" and said "he didn't want no union in the place" (A. 8; 79).

*B. The Company discharges employees
Pikka, Sibley and Johnson*

On Monday, February 12, 1968, second shift employees Pikka, Sibley and Johnson, dissatisfied at their lack of a lunch break, decided that Johnson should ask John Tersinar, who was in charge of the shift, to permit a ten-minute break for lunch. Johnson did so, but Tersinar denied the request. Nevertheless, the three employees, joined by employees Mattson and Golembeski, took a lunch break that evening, and continued to do so for the next three days. On Friday, John Tersinar informed them that if they continued their break activity that evening, "not to bother to come

²This incident occurred more than six months prior to the filing of unfair labor practice charges in this case (see Section 10(b) of the Act), and was considered by the Board only as background evidence.

³The complaint did not allege Olson's discharge violated the Act. William Tersinar testified that Olson was subsequently rehired by the Company (A. 177).

out Monday." Thereafter, the lunch break was not repeated (A. 8-9, 11; 69-72, 80-81).

The following Wednesday evening, February 21, plant superintendent William Tersinar called Sibley to his office. After some preliminaries, Tersinar told Sibley he was being laid off "for giving his son trouble." When Sibley lingered in the plant for a moment to inform Pikka he had been laid off, the elder Tersinar came out of his office and told Sibley to "get out" (A. 9, 11; 73-74). Tersinar then also indicated to Pikka and Johnson that they should punch out as well, whereupon the three employees left the plant (A. 9, 11; 73-74, 81-82).

The next day Sibley, Johnson and Pikka returned to the plant to obtain their checks and layoff slips. The elder Tersinar refused to give them layoff slips, however. He told Sibley that he wasn't laid off, but fired; and he informed Johnson and Pikka that they had quit (A. 10; 74-75, 82).

C. The Company learns of employee union activity

On the weekend of February 24-25, employee Glenn LeGassa passed out Union authorization cards among the employees and obtained 19 signed cards from them by February 26 (A. 13, 19, n. 28; 50-51, 226-231). The wife of one employee, Mike Vilencia, objected to the solicitation of her husband on behalf of the Union, and telephoned the elder Tersinar on February 25 to complain. Mrs. Vilencia told Tersinar that "[her] husband didn't have anything to do with the group of employees who were involved in union activities at the plant." Tersinar replied that he had heard rumors about Union activity, "he hoped this didn't close the plant due to high overhead, and that the employees should have waited before organiz-

ing since wages were due to go up" (A. 13; 98-99, 234-235). Later that day Tersinar called employee Clarence Johnson to inquire whether he had been contacted by the Union. Tersinar told Johnson that Mrs. Vilencia had telephoned him with the news of the Union's organizing drive, and stated to Johnson that "if the union comes in we're going to close the doors" (A. 13-14; 113-114).

D. The Company discharges seven employees on February 26 and makes further statements to deter unionization.

On the morning of February 26, first shift employees Mattson and Luoma entered the plant to commence their workday. Willaim Tersinar met them at the door and asked Luoma if it was true that the Union was trying to organize the plant, relating that he had received a call from Mrs. Vilencia to that effect. Luoma replied in the affirmative. Tersinar then told the two men not to punch in, so both sat down at a large picnic table located in the area (A. 5, n. 2, 14; 106-107, 111, 112, 217). Pacing back and forth, Tersinar proceeded to discuss the Union, stating that he would close the plant if it came in, that the Union's presence had caused the loss of Company cash and food bonuses at the Company's Chicago plant, that he "had in mind to give the guys hams for Easter," and that a Union victory would mean that employees would have to work four presses instead of three and still get no breaks (A. 14; 107, 111).

About this time employees Westeen, Twiggs, Raymond and George Monti, and LeGassa arrived. Tersinar also told them not to punch in, and the five joined Mattson and Luoma at the picnic table. Tersinar informed the newcomers of his feelings: that if the Union came in, he would "lay the whole bunch of [them] off;" he would shut the doors; he would not tolerate a union (A. 15; 58-59, 117, 120, 121).

Employee Mike Vilencia was the last employee to arrive and Tersinar told him to sit at the picnic table with the others. He then inquired of the assembled employees whether they wanted to work, and was told by each, no, "not if the rest don't" (A. 15; 108, 111-112, 152). Vilencia was the only exception: he replied he had to work to support his family (A. 15; 111-112, 152). Tersinar then said, "You are all laid off; no you are all fired," and walked over to the timeclock and pulled out a number of time cards (A. 15; 59, 108, 112, 117, 121). The employees at the picnic table, except for Vilencia, thereupon went back to the locker room for their clothes and left the premises (A. 15; 108, 112, 117, 121, 153).

Later that day, around noon, Tersinar met Mrs. Vilencia at the plant where she had come to pick up some insurance forms. Tersinar told her that he was disappointed, that he understood her husband was mixing with employees who were talking union, and he might have to "let [Vilencia] go if he is the instigator" (A. 21; 233). Mrs. Vilencia assured Tersinar that her husband was not involved (A. 234).

About 4:30 p.m. that same day, William Tersinar was discussing the Union situation with a group of employees on the second shift. He informed them that the Company didn't want a union and would close the doors if one got in; that the union in the Company's Chicago plant had never been able to help anyone; and that the Chicago employees wanted to rid themselves of their union. Tersinar then turned to Robert Whitburn, a second shift employee, and asked him if he had signed a Union card. When Whitburn replied that he had, Tersinar commented, "It didn't help you very much, did it?" (A. 21; 122-123).

*E. The Union's demand for recognition
and bargaining and the
Company's refusal*

After discharging the seven employees on the morning of February 26, William Tersinar received a call from Joe Soltis, the Union's staff representative. Soltis asked Tersinar to reinstate the seven, stating that a majority of the Company's employees had designated the Union as their bargaining representative. Tersinar refused to reinstate anyone, stating that the seven employees had quit (A. 18; 128, 182). The Union made a formal demand for recognition by letter later that day (A. 18; 236).

An exchange of letters between the Company and the Union then commenced, culminating in a meeting between Company and Union officials at the Company's offices on March 25 to resolve the question of the Union's majority status and its demand for bargaining (A. 18, 20; 129-132, 237-239). At this meeting the Union produced thermofax copies of its signed authorization cards and requested recognition (A. 20; 133-134, 240-249). The Company had no quarrel with the signatures on the cards, but claimed that most of the signees were no longer employees, having "quit" (A. 20; 135).⁴ The meeting proceeded no further, and no subsequent meeting was ever held (A. 20; 136).

⁴This group consisted of the three employees discharged on February 21 (*supra*, pp. 4-5), the seven fired on February 26 (*supra*, pp. 6-7), employee Golembeski, discharged thereafter (*infra*, p. 9), and employee Gary Laine, who, the Trial Examiner found, did quit the Company (A. 18, n.21).

F. The discharge of employee Golembeski and subsequent Company threats and coercion.

George Golembeski was a member of the second shift and had participated in the short-lived "lunch break" of the week of February 12. He was ill and did not attend work during the week of February 19, nor on February 26 and 27. On February 28, Golembeski, having heard from another employee that the second shift had been consolidated with the first shift, called William Tersinar to confirm the fact. Tersinar replied that what Golembeski had heard was true.⁵ Golembeski then informed Tersinar that he was ready to return to work, but Tersinar said, "No, you'd better stay home, too." (A. 19, 22; 140-144.)

Some time in April—the record does not indicate the precise date—William Tersinar approached a group of employees in the plant, including employee Robert Whitburn. Tersinar started talking about unionism, saying that he had orders from the head office in Chicago to close down the Wakefield facility if the Union came in. Tersinar continued that he wanted to keep the plant open because he and the plant chemist had homes in the area, but if the Union did succeed in organizing the plant, he would close it down. Tersinar also made similar remarks to other employees on different occasions around the same time (A. 23; 124-125).

II. THE BOARD'S CONCLUSIONS AND ORDER

On the basis of the foregoing, the Board concluded that the Company violated Section 8(a)(1) of the Act by coercively interrogating employees

⁵The February 26 discharges had eliminated almost the entire male complement on the second shift.

and by threatening them with loss of benefits, more onerous working conditions, discharge, and plant closure if the Wakefield facility were un-ionized; further violated Section 8(a)(1) by discharging employees Sibley, Pikka and Johnson for engaging in protected concerted activity; violated Section 8(a)(3) and (1) of the Act by discharging employees Luoma, Mattson, Twiggs, Raymond Monti, George Monti, LeGassa, Westeen and Golembeski because of their membership in or activities on behalf of the Union; and violated Section 8(a)(5) and (1) of the Act by refusing to bargain collectively with the Union which had been designated as the majority representative of the employees in an appropriate unit (A. 25-27, 36-37).

The Board ordered the Company to cease and desist from the violations found and from "[i]n any other manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed to them by Section 7 of the act" (A. 27, 36). Affirmatively, the Board required the Company to offer immediate reinstatement with backpay to all employees discharged in violation of the Act.⁶ The Board also directed the Company to bargain with the Union upon request and to post appropriate notices. It denied additional remedial relief requested by the Union (A. 27-29, 35 n. 4, 36-37; see *infra*, p. 20).

On August 6, 1969, following the Supreme Court's decision in *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575 (1969), the Board decided to reconsider the Section 8(a)(5) finding and bargaining order in the instant case. Accordingly, it solicited statements of position from all parties. On September 30,

⁶The Board in its original Decision and Order inadvertently failed to include employee Twiggs among the discriminatees to be so compensated. This oversight was corrected by Order on June 9, 1969.

1969, the Board issued a Supplemental Decision and Order concluding that "Respondent's extensive violations of Sections 8(a)(1) and (3) . . . not only precluded the holding of a fair election, but were of such a pervasive and aggravated character as to warrant the finding . . . that an order directing the Respondent to bargain with the Union is necessary to repair their unlawful effects" (A. 39-40). The Board thus reaffirmed its original Decision and Order.

ARGUMENT

I. SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD SUPPORTS THE BOARD'S FINDING THAT THE COMPANY VIOLATED SECTION 8(a)(1) OF THE ACT BY COERCIVELY INTERROGATING AND THREATENING EMPLOYEES

As related in the Counterstatement, in April 1967, well before the Union began to organize the Company's employees, superintendent William Tersinar indicated the Company's attitude towards unions by stating quite bluntly that "one thing we will not do in this plant, we will not have a union" (*supra*, p. 3). Though this incident was not found to violate the Act because it occurred more than six months before the filing of charges in this case (see n. 2, p. 4, *supra*), nevertheless the Board properly considered it to be "...background evidence of Respondent's basic hostility to self-organization among its employees" (A. 7). *Local Lodge No. 1424 v. N.L.R.B.*, 362 U.S. 411, 416 (1960); *N.L.R.B. v. Stafford Trucking Inc.*, 371 F.2d 244, 246-247 (C.A. 7, 1966). This hostility subsequently manifested itself in conduct which went far beyond any legitimate opposition to unionization of the plant and which plainly violated Section 8(a)(1) and (3) of the Act.

Thus, in October, 1967, plant superintendent William Tersinar told employee Luoma, in the hearing of several other employees, that a previously discharged employee had been terminated "[b]ecause he's a union organizer" (*supra*, p. 4). The obvious implication was that any other employee who similarly engaged in union activity would be a candidate for such treatment. On December 29, 1967, when employee Pikka was hired, superintendent Tersinar asked him whether he belonged to a union and stated the Company's opposition to having a union in the plant (*supra*, p. 4). On February 25, 1968, after the Union had commenced its drive to obtain authorization cards from the employees, Tersinar suggested to the wife of employee Vilencia that if the employees had "waited before organizing" they would have had a wage increase, and, further, that a Union victory would result in plant closure (*supra*, pp. 5-6). On February 26, after ordering a number of the first shift employees not to punch in, Tersinar berated the Union in front of them, indicating that their efforts to select the Union as their representative would result in their layoff or discharge, shutting the doors to the plant, or simply the assignment of additional work without any break time (*supra*, p. 6). Later the same day, Tersinar made similar remarks concerning a plant shutdown to a group of employees standing by the timeclock and inquired of employee Whitburn whether he had signed a Union card (*supra*, p. 7). Also on February 26, Tersinar indicated to employee Vilencia's wife that Vilencia would be "let go" if he was found to have been the "instigator" of Union activities (*supra*, p. 7). Finally, in April, 1967, Tersinar reiterated to Whitburn and other employees that the plant at Wakefield would be closed if the Union came in (*supra*, p. 9).

The Board properly found the foregoing conduct of the Company to be unlawful. For it is well settled that an employer violates Section 8(a) (1) of the Act where, as here, the plant superintendent interrogates employees in an effort to learn their union sympathies or whether they have signed an authorization card, ties future benefits to defeat of the Union, threatens to discharge employees because of their union activities, and further threatens plant closure or increased workloads should the Union campaign succeed.⁷ *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 618-620 (1969); *Textile Workers v. Darlington Mfg. Co.*, 380 U.S. 265, 274, n.20 (1965); *U.A.W. v. N.L.R.B. (Preston Products Co.)*, 129 U.S.App.D.C. 196, 201, 392 F.2d 801, 806 (1967), cert. denied, 392 U.S. 906; *United Steelworkers of America v. N.L.R.B.*, 132 U.S.App.D.C. 103, 105, 405 F.2d 1373, 1375 (1968); *Food Store Employees v. N.L.R.B.*, ____ U.S. App.D.C. ____, ____, 418 F.2d 1177, 1180 (1969); *N.L.R.B. v. Mink-Dayton, Inc.*, 416 F.2d 327, 328-329 (C.A. 6, 1969).

To be sure, the evidence as to some of the incidents described above was conflicting and credibility determinations were necessary. It has long been recognized, however, that such determinations are peculiarly within the province of the Board and its Trial Examiners and should not be overturned on review, unless the testimony relied on by the Board "carries its own death wound" and the discredited evidence "carries its own irrefutable truth." *Pittsburgh S.S. Co. v. N.L.R.B.*, 337 U.S. 656, 666 (1949); Accord: *N.L.R.B. v. Walton Mfg. Co.*, 369 U.S. 404, 407, 408 (1962);

⁷The fact that Tersinar made some of his threats to the wife of an employee (Mary Vilencia) rather than to the employee himself is immaterial. *Keller Ladders Southern, Inc.*, 161 NLRB 21, 24 (1966), *enf'd*, 405 F.2d 663, 666 (C.A. 5, 1968); *Redwing Carriers, Inc.*, 125 NLRB 322, 323 (1959), *enf'd on this point*, 284 F.2d 397 (C.A. 5, 1960).

Joy Silk Mills v. N.L.R.B., 87 U.S.App.D.C. 360, 369, 185 F.2d 732, 741 (1950), cert. denied, 341 U.S. 914. The record does not show that this is the case here, and, accordingly, the Board's findings are entitled to affirmance. *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488 (1951).⁸

**II. SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD SUPPORTS
THE BOARD'S FINDINGS THAT THE COMPANY DISCHARGED
THREE EMPLOYEES IN VIOLATION OF SECTION 8(a)(1) OF
THE ACT AND EIGHT EMPLOYEES IN VIOLATION OF 8(a)(3)
AND (1) OF THE ACT**

The Company did not confine itself to verbal acts of threats and coercion. It also engaged in a series of discharges to counter the employees' concerted activity and, ultimately, the Union's organizing drive. As set forth previously (*supra*, pp. 4-5), employees Pikka, Sibley and Johnson, in conjunction with some other employees, consulted among themselves and decided to attempt to obtain a permanent lunch break during the second shift in the plant. They made a request of John Tersinar, who was in charge of the second shift, for such a break and backed up their request by action—i.e., they went ahead and took lunch breaks. John Tersinar's

⁸The Company's claim of bias on the part of the Trial Examiner is totally without substance. On the contrary, the Trial Examiner carefully weighed the testimony and demeanor of the witnesses, and where he felt the General Counsel had failed to prove his case or the Company would be prejudiced by the General Counsel's attempt to amend the complaint, he so held (A. 4, 10, n.9, 11, n.10, 23-25; 43-44). Credibility determinations adverse to a particular party do not demonstrate bias. *N.L.R.B. v. Pittsburgh S.S. Co.*, *supra*, at 659-660. The language of the Court in *N.L.R.B. v. Lewisburg Chair & Furniture Co.*, 230 F.2d 155, 156 (C.A. 3, 1956) is equally applicable here: "The feeling that the trier of the fact, be he baseball umpire, trial judge or hearing officer, is biased is not uncommon for one against whom decision has gone. This case presents nothing more than that on this point." Accord: *N.L.R.B. v. American Art Industries, Inc.*, 415 F.2d 1223, 1226-1227 (C.A. 5, 1969).

response was first to deny the request and then to warn the employees on Friday, February 16, after four days of lunch breaks, that if such conduct was repeated, they need not return to work. The employees heeded this warning and took no further breaks. Nevertheless, on February 21, after a five day hiatus, the elder Tersinar called Sibley, one of the ringleaders into his office, told him he was laid off for "giving his son trouble," and then told Pikka and Johnson to punch out as well. The next day Tersinar even refused to give the employees layoff slips, telling Sibley he was "fired," and informing Johnson and Pikka that they had "quit."

Significantly, when called upon to explain these discharges, neither William Tersinar nor his son John alleged that any of the three employees had been discharged for insubordinate conduct, i.e., the taking of the lunch break without permission. Both claimed that Sibley was dismissed because of his "horseplay" and that Pikka and Johnson quit in sympathy when Sibley was fired (A. 10: 174-175, 212-215). The Trial Examiner, in resolving the credibility question before him, did not accept this explanation of the facts. Thus, he found that William Tersinar was an unreliable witness,⁹ and that Pikka and Johnson were good workers whom the Company had not theretofore considered firing (A. 11; 175-176). In view of the foregoing, as well as the evidence as to Tersinar's overt and extreme hostility to unionization of the plant, we submit that the Board could properly infer that the real motive for the discharge of Sibley, Pikka and

⁹Tersinar's overall testimony was evasive, contradictory, and at times at variance with the Company's other evidence (A.8, n.7-8, 11, 13-14, 20, n.17, 22, n.29; 149, 190, 198-199, 202, 203-206, 241-243, 246-248, 252-253). Compare A.24, n.34.

Johnson was that they had acted in concert to improve working conditions. Termination of these employees would obviously serve as an object lesson to other employees to refrain from all such activity in the future, thereby effectively nullifying the rights guaranteed by the Act. Accordingly, the discharges of Sibley, Pikka and Johnson were violative of Section 8(a)(1). *N.L.R.B. v. Washington Aluminum Company*, 370 U.S. 9, 14-17 (1962); *Elam v. N.L.R.B.*, 129 U.S. App. D.C. 388, 390-391, 395 F.2d 611, 613-614 (1968); *International Molders Union v. N.L.R.B.*, U.S. App. D.C. , 410 F.2d 1061, 1063 (1969).

Several days after Pikka, Johnson, and Sibley were discharged, Superintendent Tersinar learned of the Union's organizing efforts and castigated the first shift employees for their Union activities, asking them if they were going to go to work. Except for Vilencia, the others replied, no, "not if the rest don't." Tersinar then fired them.

The Company alleged at the hearing that the dischargees voluntarily quit. However, the Board certainly was not required to accept this interpretation of the facts. The evidence indicated that each of the dismissed employees had come to the plant intending to go to work, but had been prevented from punching in by Tersinar, who then launched into an anti-Union diatribe. Tersinar's statements, as we have already seen (*supra*, pp. 12-13), contained blatant threats violative of Section 8(a)(1) of the Act. However, what is important in connection with the discharges that followed is that, as the Trial Examiner found, these threats indicated to the "employees that some or all of them were scheduled for immediate discharge because of their self-organizational activity . . ." (A. 18). At the very least, Tersinar's remarks that a Union victory would result in layoffs, discharges or plant closure made clear to the employees that support

for the Union was incompatible with an employee's retention of his job. In this context, the Trial Examiner fairly concluded that "... Tersinar's inquiry as to whether [the employees] were going to work... really constituted a demand that, to continue in employment, they would be required to renounce their union activity . . ." (A. 18). By placing such a choice before a group of employees and then by discharging seven of them¹⁰ when they refused to repudiate the Union and instead "expressed their solidarity with the others" (A. 18), the Company plainly violated Section 8(a)(3) and (1) of the Act. *N.L.R.B. v. Ra-Rich Mfg. Corp.*, 276 F.2d 451, 453-454 (C.A. 2, 1960); *Art Metalcraft Plating Co., Inc.*, 133 NLRB 706, 718 (1961), *enf'd*, 303 F.2d 478 (C.A. 3, 1962); cf. *Amalgamated Clothing Workers v. N.L.R.B.*, ____ U.S. App. D.C. ___, ___, F.2d ___, ___, 71 LRRM 2863, 2867 (C.A.D.C., Nos. 21797, 22090, June 20, 1969).

The Board was likewise justified in concluding that the discharge of employee Golembeski several days later was also discriminatorily motivated, notwithstanding the Company's claim that Golembeski was terminated because he had failed to call in within three working days when he was absent because of illness. Thus, the Trial Examiner credited Golembeski's testimony that, after being out since February 19, he called in on February 28 to advise that he was ready to report for work that day, and that Tersinar simply told him "No, you'd better stay home, too" (*supra*, p. 9).¹¹

¹⁰Luoma, Mattson, Raymond Monti, George Monti, Twiggs, LeGassa and Westeen (*supra*, pp. 6-7).

¹¹The Trial Examiner rejected Tersinar's testimony that Golembeski's call was made on March 1, that Tersinar told him at that time he was discharged for failing to obey the three day call-in rule, and that Golembeski's employment was actually terminated as of March 1 (A. 22; *infra*, Supp. App. I). The Examiner pointed

[continued]

Tersinar's failure to tell Golembeski why he was not to return to his job would, without more, render the Company's later explanation suspect. So also would Tersinar's testimony (A. 22; *infra*, Supp. App. 1) that he did not discharge Golembeski until March 1, which he implied was the fourth day of Golembeski's absence, whereas the credited evidence is that Golembeski had actually been out since February 19 (A. 19, 22; 144). Clearly, Tersinar was unconvincing in his efforts to show that action was taken against Golembeski immediately after his alleged deficiency in not calling in after three days. *N.L.R.B. v. Mid State Sportswear, Inc.*, 412 F.2d 537, 539 (C.A. 5, 1969). Accord: *N.L.R.B. v. Louisiana Mfg. Co.*, 374 F.2d 696, 704 (C.A. 8, 1967). Even more revealing, however, was Tersinar's use of the word "too" in telling Golembeski to "stay home, too". As the Trial Examiner found, this persuasively demonstrates ". . . . that Tersinar, recalling Golembeski's participation in the taking of the 10-minute lunch break, bracketed him with the seven employees he had discharged two days earlier, after he learned of the Union's organizing campaign" (A. 22). And having thus linked Golembeski with organizational activity at the plant, the Board reasonably inferred that Tersinar was determined to deny him employment for the same reason he had earlier discharged the other employees: to discourage union membership or activity. Accordingly, the Board could conclude, as it did, that Golembeski's discharge also violated Section 8(a)(3) and (1) of the Act. *N.L.R.B. v. McNally Bros., Inc.*, 417 F.2d 1029, 1830 (C.A. 2, 1969); *International Union of Electrical Workers v. N.L.R.B.*, ____ U.S. App. D.C. ____, ____, 418 F.2d 1191, 1193 (1969).

out that Tersinar generally was not a credible witness, and that his testimony as to the date of Golembeski's discharge was inconsistent with documents prepared by the Company which omitted Golembeski's name from the list of employees as of February 27 (A. 22, n.29; 252).

III. SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD SUPPORTS THE BOARD'S FINDINGS THAT THE COMPANY REFUSED TO BARGAIN WITH THE AUTHORIZED REPRESENTATIVE OF ITS EMPLOYEES IN VIOLATION OF SECTION 8(a)(5) AND (1) OF THE ACT

The Union's organizing drive had occurred the weekend prior to the discharge of the seven employees on February 26. At that time, the Union had obtained 18 authorization cards out of 31 current employees, a clear majority. It obtained the nineteenth on February 26 (A. 13, 19-20: 52-53, 56-57, 66-67, 83, 225-226, 227-231, 250-252). The Union then called the Company, informed Tersinar of its majority status and requested bargaining; this was followed by a formal request by letter (A. 236).

The Company has not challenged the authenticity of the cards or the unit requested by the Union. Its sole defense was that eleven cards should not have been counted because they were obtained from employees who had "quit." However, as we have shown in the previous section, the eleven employees in question were unlawfully discharged by the Company. And, as the Trial Examiner stated, the Company's counsel conceded that "if those terminations were unlawful, the Union did represent a majority and the refusal to bargain was also unlawful" (A. 7).

The concession of counsel correctly reflects the legal principles applicable here. Thus, the cards of the eleven discriminatees were properly counted towards the Union's majority because, to do otherwise, would be to permit the Company to profit from its own misconduct. *N.L.R.B. v. Hunter Engineering Co.*, 215 F.2d 916, 921 (C.A. 8, 1954); *N.L.R.B. v. Sifers*, 171 F.2d 63, 66 (C.A. 10, 1948). Accord: *Retail Store Employees v. N.L.R.B.*, 71 LRRM 2935, 2938, n. 9 (C.A.D.C., Nos. 21551 and 21615, July 10, 1969). See also *N.L.R.B. v. Gissel Packing Co.*, 395 U.S.

575, 610 (1969); *Ray Brooks v. N.L.R.B.*, 348 U.S. 96 (1954); *Medo Photo Crop. v. N.L.R.B.*, 321 U.S. 678, 687 (1944); *Franks Bros. Co. v. N.L.R.B.*, 321 U.S. 702, 704 (1944). Moreover, as the Board found, the Company's unfair labor practices—the blatant threats to job security and the unlawful discharge of 11 employees—were of a “pervasive and aggravated character” and “precluded the holding of a fair election” (A. 39-40). Accordingly, the Board correctly concluded not only that the Company violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request for recognition and bargaining, but also that a bargaining order is appropriate as a remedy in the circumstances. *N.L.R.B. v. Gissel Packing Co., supra*, 395 U.S. at 610, 615, 618-620; *N.L.R.B. v. Wylie Mfg. Co.*, 417 F.2d 192 (C.A. 10, 1969); *Retail Store Employees v. N.L.R.B.*, *supra*.

IV. THE BOARD'S ORDER IS PROPER

In No. 23,511, the Union complains that the Board erred in failing to order additional remedies against the Company. Thus, the Union requested that the Company be ordered (1) to make employees whole for losses suffered as a result of its refusal to bargain; (2) mail copies of the Board notices to the employees; and (3) permit the Union on Company property to address the employees and a Board agent to read the Board notice and answer questions. These remedies were considered by the Board, but not adopted. The Board held that in the circumstances of this case its traditional remedies would suffice. We show below that the Board was well within its discretion in structuring the relief as it did.

This Court has long recognized that “the Board’s power to fashion remedies places a premium upon agency expertise and experience, and the broad discretion involved is for the agency and not the court to exercise.”

Amalgamated Clothing Workers of America v. N.L.R.B., 125 U.S. App. D.C. 275, 281, 371 F.2d 740, 746 (1966). See also *Amalgamated Clothing Workers of America v. N.L.R.B.*, ____ U.S. App. D.C. ____, ____, ____ F.2d ____, ____, 72 LRRM 2698, 2700 (Nos. 22088, 22568 and 22567, November 13, 1969); *United Steelworkers of America, AFL-CIO v. N.L.R.B.*, 130 U.S. App. D.C. 369, 373, 401 F.2d 434, 438 (1968) cert. denied, 395 U.S. 946; *United Hatters v. N.L.R.B.*, 126 U.S. App. D.C. 149, 151-152, 375 F.2d 325, 327-328 (1967). Consequently, "It is for the Board, not the Courts, to determine how the effect of prior unfair labor practices may be expunged." *International Association of Machinists v. N.L.R.B.*, 311 U.S. 72, 82 (1940); *Fibreboard Paper Products Corp. v. N.L.R.B.*, 379 U.S. 203, 216 (1964). Accord: *Consolo v. Federal Maritime Commission*, 383 U.S. 607, 621 (1966).

Contrary to the Union's contentions in its brief (Union brief p. 10), the mere fact that the Board has found it necessary in other factual situations to require extraordinary relief does not warrant a finding that it abused its discretion in refusing to order the identical remedies in this case. Indeed, this Court has frequently refused to order the Board to grant additional remedial relief of the type the Union requested here. *Truck Drivers and Helpers Local No. 728 v. N.L.R.B.*, ____ U.S. App. ____, ____, 415 F.2d 986, 990 (1969) (mailing notices to employees not required); *IBEW v. N.L.R.B. (Presto Mfg. Co.)*, ____ U.S. App. D.C. ____, ____, 417 F.2d 1144, 1148 (1969) (Union denied greater access to employees); *IUE v. N.L.R.B. (Regency Electronics, Inc.)*, 69 LRRM 2886 (C.A.D.C., Nos. 21600 and 21705, October 23, 1968) (Union denied more expansive remedial provisions). Furthermore, while explaining why it refused to order all the relief the Union requested (A. 35, n. 4), the Board in this case did ex-

pand the relief which the Trial Examiner originally recommended. Thus, it issued a broad cease and desist order which forbade the Company from "in any other manner interfering with, restraining or coercing its employees in the exercise of rights guaranteed to them by Section 7 of the Act. . ." (A. 36). *International Brotherhood of Teamsters, Local 328 v. N.L.R.B.*, ____ U.S. App. D.C. ____, ____, ____ F. 2d ____, ____, 72 LRRM 2654, 2655 (Nos. 21913 and 21977, November 6, 1969).

In sum, we submit that it is entirely proper for remedial relief to be determined on a case by case basis, and that the matter be left to "the Board, with its training and experience to accomplish the policies of the Act." *United Steelworkers of America v. N.L.R.B.*, 129 U.S. App. D.C. 80, 87, 390 F.2d 846, 853 (1967), cert. denied, 391 U.S. 904.¹²

¹²The Union's reliance on *H. W. Elson Bottling Co.*, 155 NLRB 714 (1965), modified, 379 F.2d 223 (C.A. 6, 1967), and *J. P. Stevens Co.*, 157 NLRB 869, modified, 380 F.2d 292 (C.A. 2, 1967), cert. denied, 389 U.S. 1005, cited at pp. 20-24 of its brief, is misplaced. In *Elson*, unlike the present proceeding, the Board issued no bargaining order, and its extraordinary remedies, as the Board indicated, were specifically designed to "redress the balance" and give the employees "further opportunity to engage in organizational efforts." 155 NLRB at 716. Nor did the Union (although it so requested) obtain a bargaining order in *J. P. Stevens*. There, too, the Board's special remedies were intended to "undo the effect of the massive and deliberate unfair labor practices committed by the [Company] in its successful efforts to frustrate organization by its employees." 157 NLRB at 878. Moreover, extraordinary remedies were justified in *Stevens* because, as one Court subsequently characterized the situation, Stevens had "been engaged in a massive multistate campaign to prevent unionization of its Southern plants." *J. P. Stevens v. N.L.R.B.*, 417 F.2d 533, 537 (C.A. 5, 1969). There is no indication of a "massive multistate" anti-union campaign here, since the Company's efforts against the Union, though flagrantly unlawful, appear confined to a single facility.

CONCLUSION

For the reasons stated, it is respectfully requested that the Board's order should be enforced in full and the petition for review should be denied.

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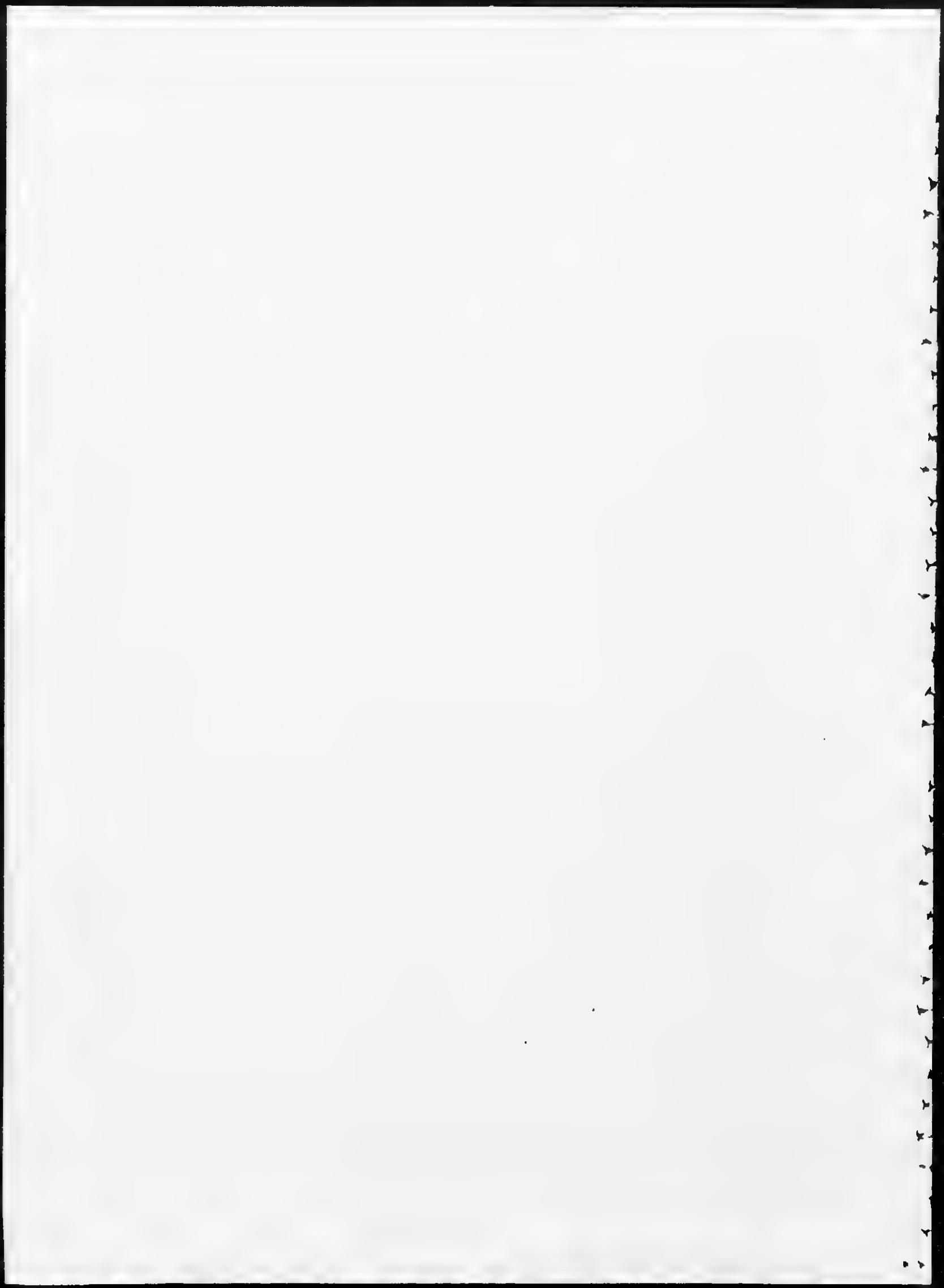
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March, 1970.



SUPPLEMENTAL APPENDIX

The following excerpts from the official transcript of the proceeding before the Board were inadvertently omitted from the Joint Appendix.

* * *

[222] Q. [Mr. Selby] And going back to GC 16 again, I note the following statement, and again I quote, "George Golembeski did not show on night shift 2/26/68, and asked if he still had his job." Now, Golembeski appears on the list of employees—or, on GC 14 and 15, but not on 16. When was he removed from your payroll?

[223] A. [William Tersinar] Well, four days after the 26th of February he called in and asked if his job was still open and I told him he was warned of staying home, to call if he wanted to have his job, so he didn't call in for four days and I told him he could just stay home.

Q. All right. So, am I correct in assuming that as of what, the 29th of February, you terminated him when he called up?

A. I think it was the first of—

Q. March?

A. — March that he called in, yes.

* * *

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STEELWORKERS OF AMERICA, AFL-CIO,)
Petitioner,)
vs.)
NATIONAL LABOR RELATIONS BOARD,)
Respondent,)
and)
QUALITY RUBBER MANUFACTURING COMPANY, INC.,) No. 23,551
Intervenor.)
NATIONAL LABOR RELATIONS BOARD,)
Petitioner,) May 1 1970
vs.)
QUALITY RUBBER MANUFACTURING COMPANY, INC.,)
Respondent,)
and)
UNITED STEELWORKERS OF AMERICA, AFL-CIO,)
Intervenor.)

No. 23,709

ON PETITION TO REVIEW AND APPLICATION FOR
ENFORCEMENT OF AN ORDER OF THE NATIONAL
LABOR RELATIONS BOARD

REPLY BRIEF OF UNITED STEELWORKERS OF AMERICA, AFL-CIO

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REPLY BRIEF OF UNITED STEELWORKERS OF AMERICA, AFL-CIO

The Employer, in that part of its brief which responded to the Union's Petition for Review of the Board's decision and request for additional remedies, simply adopted the arguments made by the Board in its brief on the same issue. Therefore, this reply brief will be devoted entirely to the Board's answer to the Union's Petition for Review.

I.

At the heart of the Board's response is the legal principle that "the Board's power to fashion remedies places a premium upon agency expertise and experience, and the broad discretion involved is for the agency and not the court to exercise". (Board Brief pp. 20-1).

We have no quarrel with this principle. As a matter of fact, we recognized it in our initial brief. However, the Board's power in fashioning remedies is not absolute or beyond appeal. Courts of Appeal, including this one, have struck down or modified remedies which the Board has decreed. Garwin Corp., 374 F. 2d 295 (D.C. Cir., 1967), cert. den. 387 U.S. 980. Similarly, this Court has remanded cases to the Board for further consideration in light of the fact that the remedies ordered were not sufficient to effectuate the policies of the Act. See, for example, Electrical Workers, IUE

v. NLRB (Tidee Products, Inc.) F. 2d ___, 73 LRRM 2870

1/
(D.C. Cir., 1970).

In Electrical Workers, IUE v. NLRB, supra, this Court made it clear that the Board must at least provide a satisfactory justification for its order. No such justification was provided or even attempted in the Board's order or in the brief before this Court. It is not a justification to say that similar proposed remedies have been denied in other cases. "That indeed seems to be the misguided assumption of the Board -- that it is not subject to disapprobation if it is only doing the same as it has done before". Electrical Workers, IUE v. NLRB, supra, at p. 2874.

2/

Nor does the Board's statement in footnote 4 of its opinion, "We deem it inappropriate in this case to depart from our existing policy" (JA 35), constitute "satisfactory justification". Mere words are not a substitute for reasoning and analysis.

1/ See also NLRB v. Warrensburg Board & Paper Corp., 340 F. 2d 920 (1965), where the Second Circuit without remand modified the proposed terminal date for a contract which the Board ordered an employer to sign so that it extended past the terminal date which the Board order encompassed.

2/ The Board's reliance on this Court's approval for standard remedies is similarly ill-placed. Truck Drivers and Helpers Local No. 728 v. NLRB, 415 F. 2d 986 (1969), IBEW v. NLRB (Presto Mfg. Co.) ___ F. 2d ___, 71 LRRM 2402 (1969) and IUE v. NLRB (Regency Electronics, Inc.) ___ F. 2d ___, 69 LRRM 2886 (1968) did not involve the serious and extensive (percentage-wise) unfair labor practices that were involved in this case.

Moreover, the Board's statement in its brief that the Board did expand its relief in this case to provide for a broad cease and desist order (Board Brief, pp. 21-22) is a sham. The Trial Examiner had found sufficient basis for and had actually recommended a broad cease and desist order (JA 26, lines 1-5). However, he inadvertently omitted the broad cease and desist provision from his Recommended Order. The correction of inadvertent error does not constitute independent review of the effectiveness of the Trial Examiner's Recommended Order. Rather, it simply buttresses the conclusion that the Board merely rubber stamped the decision of a Trial Examiner who, under Board policy, was apparently not free to order additional remedies.^{3/}

II.

The Board, in its brief, has failed to comment on the Union's argument that the standard NLRB remedies are insufficient in cases such as this where flagrant violations are involved. The Union, in its brief, undertook an extensive review of standard Board remedies and demonstrated their weaknesses in light of reason and empirical studies which

^{3/} C.f., Electrical Workers, IUE v. NLRB (TidEE Products, Inc.), supra, at pages 2874-5.

4/
this Court has cited with approval.

The Union's second major argument was that this case presents violations which are more flagrant or just as flagrant as the violations in cases where additional remedies similar to those requested in this case have been granted by the Board. The Board's only response to this argument was to state that "the mere fact that the Board has found it necessary in other factual situations to require extraordinary relief does not warrant a finding that it abused its discretion in refusing to order the identical remedies in this case". (Board Brief, page 21). The whole point of the Union's brief was that the violations involved herein were as flagrant, if not more flagrant, than those in the cases it cited.

The Board attempted to distinguish H. W. Elson Bottling Co., 155 NLRB 714 (1965) modified, 379 F. 2d 223 (6th Cir., 1967) on the ground that here, unlike Elson, a bargaining order was issued. Under the Board's rationale, J. P. Stevens Co., 157 NLRB 869, modified, 380 F. 2d 292 (2nd Cir., 1967), is distinguishable because here, unlike Stevens, the unfair labor practices were not "massive" and "multistate" in character.

4/ E.g., Ross, Analysis of Administrative Process Under Taft-Hartley, 63 Lab. Rel. Rep. 132 (BNA 1966).

The Stevens distinction is clearly unpersuasive. "Massive multistate" violations were not involved in Elson Bottling -- yet additional remedies were granted there. Moreover, in terms of the size of the plant, the unfair labor practices here were massive -- one-third of the plant was discriminatorily discharged. Surely the Board is not saying that we will attempt to remedy massive multistate violations but we will surrender if the massive violations are limited to one state.

The Elson Bottling distinction is also clearly erroneous. Essentially, the General Counsel for the Board is saying that additional remedies are not needed where a bargaining order is granted. Such a theory is contrary to reason, empirical study and this Court's decisions (as well as the actions of the Board itself).

A bargaining order is simply an admission ticket to the negotiating table. It does not assure that meaningful bargaining will take place. There is nothing in a bargaining order to prevent an employer from talking the Union to death without ever agreeing to anything. Only true restoration of the status quo can achieve meaningful bargaining and the status quo -- employee support -- cannot be achieved by a bargaining order or any of the other standard, ineffective

Board remedies.

This principle has been recognized by Professor Ross in his extensive study, *Analysis of Administrative Process Under Taft-Hartley*, 63 Lab. Rel. Rep. 132 (BNA 1966).

As this Court stated in Electrical Workers, IUE v. NLRB, supra:

"Employee interest in a union can wane quickly as working conditions remain apparently unaffected by the union or collective bargaining. When the company is finally ordered to bargain with the union some years later, the union may find that it represents only a small fraction of the employees." (At page 2874) 5/

In addition, as this Court noted in Electrical Workers, IUE v. NLRB (Tidiee Products, Inc.), supra, the bargaining order is prospective only. It does not compensate employees for the bargaining benefits they would otherwise have obtained if the employer had not violated the law in the first place. There is nothing in the Board's brief which even hints at a response to this argument.

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5/ The Board has itself implicitly recognized the ineffectiveness of bargaining orders for it has under consideration additional remedies in bargaining order situations where the violations were far less serious than those involved here. Zinke's Foods, Inc. (TXD 662-66, 30-CA-372) Ex-Cell-O Corporation (TXD 80-67, 25-CA-2377; Herman Wilson Lumber Company (TXD 757-66, 26-CA-2536; and Rasco Olympia, Inc., d/b/a Rasco 5-10-254 (TXD (SF) 167-66, 19-CA-3187).

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The Undersigned hereby certifies that three (3) copies of this Reply Brief have this day been mailed, postage prepaid, to the following counsel at the addresses listed below:

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Intervenor.

No. 23,551

United States Court of Appeals
for the District of Columbia Circuit

FILED AUG 6 1970

Nathan J. Paulson
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No. 23,709

PETITION FOR REHEARING AND SUGGESTION FOR
REHEARING EN BANC IN NO. 23,551

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UNITED STEELWORKERS OF AMERICA, AFL-CIO,

Intervenor.

PETITION FOR REHEARING AND SUGGESTION FOR
REHEARING EN BANC IN NO. 23,551

On May 21, 1969, the National Labor Relations Board issued a decision and, on September 30, 1969, a supplemental decision in Quality Rubber Manufacturing Company, Inc., 176 NLRB No. 7 and 178 NLRB No. 117. That decision ordered only standard Board remedies for the unfair labor practices involved, even though those unfair labor practices included the discharge of one-third of the employees in the plant,^{1/} numerous threats to close the plant if the Union got in and various other threats and promises, along with an unlawful refusal to bargain.

Thereafter, the Union filed a Petition to Review and the National Labor Relations Board sought enforcement of its order.

On July 10, 1970, a panel of this Court^{2/} ordered enforcement of the Board's decision and denied the Union's request that the case be remanded to the Board for reconsideration on the issue of remedies.^{3/}

1/ Eleven of thirty-two.

2/ Circuit Judges Wright and MacKinnon and Judge Davis (sitting by designation pursuant to 28 U.S.C., Section 293(a) (1964)).

3/ The Union had requested this Court to decree additional remedies itself or, in the alternative, to remand on the issue of additional remedies and enforce in all other respects.

The July 10 decision, which was per curiam, denied the remand request by the Union in the face of International Union of Electrical Radio & Machine Workers v. NLRB [Tiidee Products],

____ F.2d ____, 73 LRRM 2870 (D.C. Cir., 1970), on the ground that, in Tiidee Products, the Company's defense was "patently frivolous", while that of Quality Rubber was not.

The Union respectfully urges that this distinction is erroneous for two reasons, as a result of which a rehearing or a hearing en banc is warranted.

First, the distinction so severely limits Tiidee Products as to make it practically meaningless. It is the rare case indeed in which a Court can say that the position of a litigant is "patently frivolous". Yet, the distinction as urged in this decision would prevent proper redress of employee rights by this Court in the face of a glaringly inadequate remedial order so long as there is some colorable argument (however erroneous) which is raised by the Respondent.

Second, the distinction is contrary to the intent of Tiidee Products and at least one subsequent case. It is true that Tiidee Products discusses the frivolousness of the appeal in that case. But Tiidee Products stands for a far more significant

doctrine than that. In Tiidee Products, this Court analyzed, for the first time and in great detail, the various reasons why standard NLRB remedies are inadequate to effectuate the policies of Section 10 of the National Labor Relations Act in situations where serious unfair labor practices have been committed.

This Court followed up in that decision by establishing a number of very significant principles for the reviewability of NLRB remedial orders. It established that the mere fact that the NLRB claims that the remedy that it is ordering is the same as the remedy ordered in another case does not argue strongly in support of the effectiveness of the remedy.^{4/} This Court also noted in that decision that Section 10 did not confer upon the Board an area of discretion in which it could act or not act, but a duty to act to remedy violations of the National Labor Relations Act. It is respectfully suggested that a self-imposed "patently frivolous" limitation on review of Board decisions is inconsistent with the Board's broad mandate to remedy violations.

4/ "That indeed seems to be the misguided assumption of the Board -- that it is not subject to disapprobation if it is only doing the same as it has done before" (Tiidee Products, ____ F.2d ____, 73 LRRM at 2874).

Moreover, this Court made clear, in a subsequent case, if it had not already been clear, that Tiidee Products was not limited to patently frivolous litigation. In Foodstore Employees, Local 347 v. NLRB [Heck's, Inc.], _____ F.2d _____, 74 LRRM 2109 (D.C. Cir., 1970), it remanded a second case to the Board for review of the remedies ordered. In Heck's, there is no indication that the appeal taken was "patently frivolous". On the contrary, the appeal was based on the ground that the evidence did not support the conclusions reached by the Board. This Court affirmed the Board's conclusions on the unfair labor practices and remanded in light of the Company's bad faith and flagrant conduct and "in light of our recent decision in Tiidee Products". It is respectfully submitted that the unfair labor practices here are likewise flagrant and warrant similar remand.

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